AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-30-90
Vol. 55 No. 210

federal register

Tuesday
October 30, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

10-30-90
Vol. 55 No. 210
Pages 45591-45794

federal register

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October 30, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150-AC56

Custody and Long-Term Care of Uranium and Thorium Mill Tailings Disposal Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations by issuing general licenses that will permit NRC to license the custody and long-term care of reclaimed or closed uranium or thorium mill tailings sites after remedial action or closure under the Uranium Mill Tailings Radiation Control Act has been completed. The intended effect of this action is to provide a surveillance procedure to ensure continued protection of the public health and safety and the environment. This action is necessary to meet the requirements of Titles I and II of the Uranium Mill Tailings Radiation Control Act.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-260. Telephone (301) 492-3877.

SUPPLEMENTARY INFORMATION:

I. Background

In the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), the Congress recognized that uranium mill tailings may pose a potentially significant radiation health hazard to the public. One of the measures enacted by Congress to control this hazard is to place the long-term care of the uranium or thorium mill tailings disposal site, after completion of all remedial actions or closure, in the hands of State or Federal government.

Title I of UMTRCA defines the statutory authority and roles of the Department of Energy (DOE) and the NRC with regard to the remedial action program for inactive uranium mill tailings sites. Title I requires that, upon completion of the remedial action program by DOE, the permanent disposal sites be cared for by the DOE or other Federal agency designated by the President, under a license issued by the Commission. Title II of UMTRCA contains similar requirements for NRC licensing of presently active uranium or thorium mill tailings sites following their closure and license termination. These disposal sites would be licensed by the Commission upon their transfer to the Federal Government or the State in which they are located, at the option of the State. These regulations will complement other UMTRCA required regulations which have been completed and cover activities through closure.

An Advance Notice of Proposed Rulemaking was issued on August 25, 1988 (53 FR 32396). The proposed rule was issued on February 6, 1990 (55 FR 3970).

II. Summary of Final Rule

The regulatory additions to 10 CFR part 40 will provide for two new general licenses. The general licenses in § 40.27 and § 40.28 will correspond to Title I and Title II of UMTRCA, respectively. The provisions in § 40.27 would apply to inactive sites and the provisions in § 40.28 would apply to active sites. Although the requirements in § 40.27 and § 40.28 will differ somewhat due to the differences in Title I and Title II of the Act, the goals to be achieved by the long-term care licensee are the same.

These regulations deal only with uranium or thorium mill tailings sites after remedial actions (for Title I) or closure activities (for Title II) have been completed to meet applicable closure standards. UMTRCA stipulates the Federal government (normally DOE) as the long-term care licensee, and thereby the owner, except in the case of a Title II disposal site where the State may elect to be the long-term care licensee. In lieu of any such State election, the Federal government will become the long-term care licensee. The NRC will receive a detailed Long-Term Surveillance Plan (LTSP) from DOE or an appropriate State which will discuss ownership (whether Federal or State), disposal site conditions, the surveillance program, required follow-up inspections, and how and when emergency repairs and, if necessary planned maintenance, will be accomplished. Unless the Commission is formally notified by the appropriate State, the DOE will submit the LTSP and will be the long-term care licensee. (See the section entitled "The Long-Term Surveillance Plan.") The general license will become effective for each individual Title I or Title II disposal site upon NRC receipt of an LTSP that meets the requirements of the general license and either NRC concurrence in completion of remedial actions (Title I site) or termination of the Title II site license.

For disposal sites governed by the provisions of § 40.27 (Title I sites), the general license applies only to the DOE or another Federal agency designated by the President. For disposal sites governed under the provisions of § 40.28 (Title II sites), DOE, or another Federal agency, will prepare and submit the LTSP, unless the State, at its option, decides to take custody of the site and be included in the general license. In the latter case the State would prepare and submit the LTSP. The authority to grant a long-term care license is reserved to the NRC. States may be the long-term care agency, but are not authorized to grant this type of license. (See section 83 b(1)(A) of the Atomic Energy Act of 1954, as amended, and 10 CFR 150.15a(b)(5)).

The general licensees for long-term care are exempted from 10 CFR parts 19, 20, and 21. These parts cover notices, instructions, notifications to workers, and inspection in part 19, standards for protection against radiation in part 20, and reporting of defects and noncompliance in part 21. These parts deal with operational activities. A general license for long-term care covers activities after the operation and clean-up of the site has been completed. Under normal circumstances the long-term care licensee will spend a day or two at each disposal site each year to confirm that the site's conditions are as expected. The disposal site will comply with 40 CFR part 192, subparts A, B, and C (for Title I sites) and 10 CFR part 40 Appendix A criteria (for Title II sites), which essentially eliminate direct radiation and air particulates and control radon releases within specified limits. Disposal site closure will, therefore, eliminate the need for specific radiation controls as specified in parts 19, 20, and 21 under normal conditions.

If damage to the disposal site requires significant repairs, then the long-term care licensee must notify NRC and describe the necessary repairs. Since worker radiation protection and occupational exposure reporting may be necessary during such repair efforts, the long-term care licensee will identify the appropriate requirements of 10 CFR parts 19, 20, and 21 to be applied. NRC may then impose appropriate portions of the above parts or regulations by order on a site specific basis depending upon the damage and the type of repairs necessary.

A minor administrative change is being made to 10 CFR part 40 appendix A Criterion 12 to allow for a more efficient reporting program. Criterion 12 states that inspection results must be reported to the Commission within 60 days following each inspection. Because each long-term care licensee, primarily the Department of Energy, will most likely have multiple disposal sites, this rule will allow annual reports that cover all of these sites under their jurisdiction. Any disposal site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary inspection report to be submitted within 60 days. The timing for submittal of the annual report will be based on when the long-term care licensee will be doing the inspections and will be submitted within 90 days of the date of the annual inspection of the last site inspected.

Criterion 12 currently deals with Title II licensees. It is being amended to include Title I licensees. Provisions in § 40.27 (Title I disposal sites) will reference Criterion 12 so that the same reporting requirements for Title II licensees will apply for Title I licensees.

There are some differences in requirements for mill tailings located on Indian lands. Where the disposal site is on Indian tribal lands, the tribes retain ownership. An exception is provided in Section 105(b) of UMTRCA, which states that in those cases where the residual radioactive material from processing sites on Indian land is relocated to a permanent disposal area not on Indian land, the DOE shall acquire title to the residual radioactive material and the disposal site. The NRC and DOE have generally agreed that disposal sites on Indian lands should be handled in the same manner as other Title I disposal sites, including conduct of surveillance under proposed § 40.27. We also understand that DOE and the appropriate Indian tribes have agreed that DOE would provide for long-term care. Four of the 24 Title I processing sites are on Indian lands. Three of these sites will also serve as disposal sites (the residual radioactive material from two of these locations will be consolidated at one disposal site).

For Title II disposal sites on Indian lands it is not clear who will be responsible for monitoring, maintenance, and emergency measures at the site. Currently, the Western Nuclear Sherwood Uranium Mill located in the State of Washington is the only site that falls into this category. UMTRCA provides that long-term surveillance will be done by the Federal government and that the licensee will be required to enter into arrangements with the Commission to ensure this surveillance. However, UMTRCA was not explicit as to which Federal agency is responsible for the disposal site, and should this site ever require emergency measures, additional authorizations may be required. The basic obligations for this site have already been codified in 10 CFR part 40, Appendix A, Criterion 11F, and are not part of this rulemaking. NRC is providing flexibility in this area and will work out long-term care arrangements for these disposal sites on a case-by-case basis.

Both § 40.27 and § 40.28 allow for potential future uses of the disposal sites. As provided in UMTRCA, any future use would require a separate Commission license to assure that the site remains or is restored to a safe and environmentally sound condition. See the "Future Uses of the Disposal Site" section.

The rulemaking provides for a general license to governmental bodies for custody and long-term care of uranium or thorium mill tailings sites after closure, pursuant to statute. Therefore, this rulemaking has no significant impact upon the private sector. However, the staff recognizes that there may be cases where communication and sharing of information between the current licensee and the future long-term care licensee may be appropriate. This communication will allow the long-term care licensee to better prepare the Long-Term Surveillance Plan by having more knowledge of how site closure was accomplished.

III. Uranium Mill Tailings Remedial Action Amendments Act of 1988 (Amendments Act)

The Amendments Act was signed by the President on November 5, 1988, and provides among other things an extension of the UMTRCA Title I program. It allows the Department of Energy until September 30, 1994 (previously 1990) to perform remedial actions at designated uranium mill tailings sites and vicinity properties. There is one major exception to the 1994 deadline. The authority to perform ground water restoration activities is extended without limitation. However, to meet the current proposed Environmental Protection Agency (EPA) ground water standard, compliance with the ground water protection provisions at the disposal site would still need to be accomplished by the 1994 date.

The reason for the extension to 1994 is to allow DOE enough time to complete remedial actions at all designated processing sites. The ground water restoration extension was provided due to the potential that it may take DOE decades to comply with EPA ground water standards for some processing sites. EPA is currently issuing new ground water standards in response to a September 3, 1985 decision by the 10th Circuit Court of Appeals in which the ground water provisions of the EPA uranium mill tailings standards (40 CFR 192. 20(a)(2-3)) for Title I processing sites were set aside and remanded to EPA. Based on the proposed EPA standards (52 FR 36000; September 24, 1987), the DOE believes that ground water restoration activities will take significantly more time than originally planned. The new standards have not yet been made final. Until final ground water standards are promulgated, UMTRCA requires that implementing agencies use the available proposed standards.

As a result of the Amendments Act, the NRC is planning to allow licensing of Title I disposal sites, where the tailings

are not being moved, to occur in two steps, if needed. The first step would allow DOE, if necessary, to do all remedial actions, which include complying with the ground water protection standards addressing the design and performance at the disposal site for closure and licensing. The Amendments Act requires this to be completed prior to September 1994. The second step, which can go on for many more years, would deal with existing ground water restoration. When ground water restoration is completed, the Long-Term Surveillance Plan would be appropriately amended. Until the EPA standards are finalized, and DOE and NRC evaluate the sites based on these standards, we will not know how many sites would likely be involved in this two step licensing process.

The Amendments Act itself did not address the potential delay of licensing Title I disposal sites due to the ground water provisions in EPA's proposed standards requiring monitoring after NRC has concurred in completion of remedial action. NRC's options ranged from a case-by-case use of EPA's supplemental standards provisions to exempt such disposal sites entirely from performance monitoring to the inflexible consequence of delaying all such licensing until completion of the ground water performance monitoring program. Such a delay could extend for up to 30 years or more. Based on interaction with other Federal agencies and the Congressional legislative history, the NRC has selected the two step approach discussed above to optimize flexibility.

NRC comments to EPA on their proposed standards suggested ways to remedy the situation. The final EPA standards may resolve this issue, but could also introduce new uncertainties. Because the proposed EPA standards are legally binding until final rules are issued, this rule is designed to have flexibility to address various situations.

IV. The Stabilization and Long-Term Care Program (Title I and Title II)

Although the end result for long-term care licensing for Title I or Title II disposal sites is similar, the processes leading up to closure of Title I or Title II sites are different. The following provides background on these processes, as well as some of the differences between Title I and Title II licensing.

Title I (24 sites)

UMTRCA charged the EPA with the responsibility for promulgating remedial action standards for inactive uranium mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with radioactive materials at the sites. The final standards were promulgated with an effective date of March 7, 1983 (48 FR 602; January 5, 1983). See 40 CFR part 192-Health and Environmental Protection for Uranium Mill Tailings, Subparts A, B, and C.

The Department of Energy will select and execute a plan of remedial action that will satisfy the EPA standards and other applicable laws and regulations. All remedial actions must be selected and performed with the concurrence of the NRC. The required NRC concurrence with the selection and performance of proposed remedial actions and the licensing of long-term care of disposal sites will be for the purpose of ensuring compliance with UMTRCA.

The portion of the EPA standards dealing with ground water requirements has been remanded by court action, and is currently being finalized by EPA (see the previous section for more details). DOE continues to perform remedial action at the inactive processing sites in accordance with NRC's concurrence with the remedial action approach. Delaying implementation of the remedial action program would be inconsistent with Congress' intent of timely completion of the program. Modifications of disposal sites after completion of the remedial action to comply with EPA's final ground water protection standards may be unnecessarily complicated and expensive and may not yield commensurate benefits in terms of human and environmental protection. Therefore, the Commission believes that sites where remedial action has been essentially completed prior to EPA's promulgation of final ground water standards will not be impacted by the final ground water standards. Although additional effort may be appropriate to assess and cleanup contaminated ground water at these sites, the existing designs of the disposal sites should be considered sufficient to provide long-term protection against future ground water contamination. NRC does not view UMTRCA as requiring the reopening of those sites that have been substantially completed when NRC concurred with the selection of remedial action in accordance with applicable EPA standards, proposed or otherwise in place at the time such NRC concurrence was given.

The stabilization and long-term care program for each site has four distinct phases. In the first phase DOE selects a disposal site and design. This phase includes preparation of an Environmental Assessment or an Environmental Impact Statement, and a Remedial Action Plan. The Remedial Action Plan is structured to provide a comprehensive understanding of the remedial actions proposed at that site and contains specific design and construction requirements. NRC and State/Indian tribe concur in the Remedial Action Plan to complete the first phase.

The second phase is the performance phase. In this phase the actual remedial action (which includes decontamination, decommissioning, and reclamation) at the site is done in accordance with the Remedial Action Plan. The NRC and the State/Indian tribe, as applicable, must concur in any changes to this plan. At the completion of reclamation activities at the site, NRC concurs in DOE's determination that the activities at the site have been completed in accordance with the approved plan. Prior to licensing, the next phase, title to the disposed tailings and contaminated materials must be transferred to the United States and the land upon which they are disposed of must be in Federal custody to provide for long-term Federal control, at Federal expense. Disposal sites on Indian land will remain in the beneficial ownership of the Indian tribe.

NRC concurrence in the DOE determination that remedial action at the processing site has been accomplished in accordance with the approved plan may be accomplished in two steps where residual radioactive material is not being moved from the processing site to a different disposal site. The Uranium Mill Tailings Remedial Action Amendments Act of 1988 allows for a two step approach for Title I disposal sites. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The second step, which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the LTSP will be appropriately amended. For sites that are being moved, licensing will occur in one step. There is no ground water restoration at the disposal site and the processing site will not be licensed after completion of remedial action. See the earlier discussion on this law for more details.

The third phase is the licensing phase. The general license is effective following (1) NRC concurrence in the DOE determination that the disposal site has been properly reclaimed and (2) the formal receipt by NRC of an acceptable Long-Term Surveillance Plan. NRC concurrence with DOE's performance of

the remediation indicates that DOE has demonstrated that the remedial action complies with the provisions of the EPA standards in 40 CFR part 192, Subparts A, B, and C. This NRC concurrence may be completed in two steps as discussed above. There is no termination date for the general license.

Public involvement has been and will continue to be provided through DOE's overall remedial action program for Title I sites and NRC's licensing program for Title II sites. The local public will have an opportunity to comment on the remedial action or closure plans proposed and implemented by DOE or the Title II licensee and to raise concerns regarding final stabilization and the degree of protection achieved. NRC fully endorses State and public input in all stages of the program, especially in the planning stages of remedial action when such input can be most effective in identifying and resolving issues affecting long-term care. At the time the LTSP is submitted, the NRC will consider the need for a public meeting in response to requests and public concerns. Therefore, NRC encourages State and public participation early in the remedial action and closure process and will provide additional opportunities, as needed, later in the process.

The final phase of the program is surveillance and monitoring and begins after NRC accepts the LTSP. In this phase DOE and NRC periodically inspect the disposal site to ensure its integrity. The Long-Term Surveillance Plan will require the DOE to make repairs, if needed.

One of the requirements in the EPA standards is that control of the tailings should be designed to be effective for up to 1000 years without active maintenance. Although the design of the stabilized pile is such that reliance on active maintenance should be minimized or eliminated, the NRC license will require emergency repairs as necessary. In the event that significant repairs are necessary, a determination will be made on a site specific basis regarding the need for additional National Environmental Policy Act (NEPA) actions, and health and safety considerations from parts 19, 20, and 21.

Title II

UMTRCA also charged EPA with the responsibility for promulgating standards for active uranium or thorium mill tailings sites. EPA completed this in Subparts D and E of 40 CFR part 192 on October 7, 1983 (48 FR 45946).

Title II processing sites have active NRC or Agreement State licenses. Each licensee is responsible for having a closure plan that is approved by the NRC or an Agreement State. This plan describes how the licensee will close the site to meet all applicable standards after completion of operations.

Before the NRC, or an Agreement State, terminates a license the site must be closed in a manner which meets applicable standards. These include the requirements contained within 10 CFR part 40 — Domestic Licensing of Source Material, or similar Agreement State requirements. In addition, 10 CFR 150.15a requires that prior to the termination of any Agreement State license for byproduct material, the Commission shall have made a determination that all applicable standards and requirements have been met. Once the future long-term care licensee has submitted a suitable LTSP, the general license takes effect when either NRC terminates the current specific license or when NRC concurs with an Agreement State's termination of the current specific license. This rulemaking provides the Commission with two options to maintain control over disposal sites in the unexpected situation when: (1) an acceptable LTSP has not been submitted; (2) the current specific license is ready to be terminated; (3) NRC had determined that the disposal site has been closed in accordance with applicable standards; and (4) disposal site custody has been transferred to the long-term care licensee. The Commission could delay termination of the specific license until an acceptable LTSP is submitted or issue an order requiring surveillance by the custodian of the disposal site, who will become the long-term care licensee under the general license. The Commission considers either of these actions to be sufficient to ensure that the disposal site will be under surveillance and control during the transition period from the specific to the general license. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. In such cases, the prime option would be to issue appropriate orders. The Commission, however, does not want to preclude the option of not terminating the specific license if this wereappropriate for a relatively short period.

The general license approach for Title II sites is similar to the process used for Title I sites. The most significant differences are:

1. A State, at its option, may take over long-term care of a Title II disposal site instead of the DOE.

2. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived for a Title II disposal site.

3. Potential future uses of a Title I disposal site are limited to subsurface rights, whereas, a Title II disposal site could also potentially allow the usage of surface rights. (See the section entitled "Future Uses of the Disposal Site").

4. Title II licensees are required to pay a minimum charge of $250,000 (1978 dollars) to cover the costs of long-term surveillance. This charge must be paid to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license. The minimum charge may be adjusted based on site specific requirements in excess of those specified in Criterion 12 of appendix A. (See the section entitled "The Long-Term Surveillance Plan", Title II, for additional details).

5. The determination that remedial action at Title I sites has beencompleted may be done in two steps, whereas the determination of acceptable closure for Title II sites will be done only once before license termination.

6. There is an additional Title II requirement when a license in an Agreement State is terminated and the disposal site transferred to the United States for long-term care. All funds collected by the State for long-term surveillance will be transferred to the United States. This requirement has already been codified in part 150 and is not part of this rulemaking.

7. Title I covers designated inactive uranium mill tailings sites. Title II covers sites licensed as of January 1, 1978 and new uranium and thorium mill tailings sites.

Twenty-seven of the 29 conventional mills licensed by NRC or Agreement Sites are not currently operating. Most of these have no plans to restart operations, and closure activities have either been started or are in planning.

V. The Long-Term Surveillance Plan (Title I and Title II)

DOE, or the appropriate State, will submit a disposal site Long-Term Surveillance Plan to the NRC to coincide with completion of remedial actions (Title I) or license termination (Title II). DOE, or the appropriate State, will be responsible for preparing the LTSP since this document will clearly define their responsibilities under the general license. As discussed previously, the LTSP for Title I disposal sites will allow a two step approach as provided in the

Uranium Mill Tailings Remedial Action Amendments Act of 1988. The Amendments Act will allow DOE to do all remedial actions, other than ground water restoration, for the first step of closure and licensing. The first step includes any performance or design features necessary to satisfy ground water protection standards, except for ground water restoration. The second step which can go on for many years, will deal with existing ground water restoration. When ground water restoration is completed, the LTSP will be appropriately modified.

Title I

The DOE has developed a "Guidance for UMTRA Project Surveillance and Maintenance" document issued in January 1986. Copies of this document are available from the U.S. Department of Energy, UMTRA Project Office, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87115. This document, which was developed with NRC staff coordination, provides detailed generic guidance for what information should be considered in designing an LTSP for Title I disposal sites.

The DOE guidance document addresses five primary activities. These activities, which are discussed in the following paragraphs, are:

1. Definition and characterization of final disposal site conditions.
2. Disposal site inspections.
3. Ground water monitoring, if necessary.
4. Aerial photography.
5. Contingency (or emergency) repair, and planned maintenance if necessary.

DOE indicated that final disposal site conditions should be defined and characterized prior to the completion of remedial actions at a site. As-built drawings should be compiled, a final topographic survey should be performed, a vicinity map should be prepared, and ground and aerial photographs should be taken. Survey monuments, site markers, and signs should be established. If the disposal site LTSP specifies that ground water monitoring is required, then a network of monitoring wells should be identified and new wells established if needed.

DOE describes three types of disposal site inspections: Phase I, Phase II and contingency inspections. Annually scheduled 1 to 2-day phase I inspections would be conducted by a small team to identify any changes in conditions that may affect design integrity. Phase II inspections would be unscheduled and dependent upon potential problems identified during a Phase I inspection. Team members of a Phase II inspection should be specialists in the potential problem areas (e.g., geotechnical engineer for settlement). Contingency inspections would also be unscheduled and occur when information has been received that indicates that site integrity has been, or may be, threatened by natural events (e.g., severe earthquake) or other means.

The need to monitor ground water conditions should be determined on a site specific basis. If it is determined that ground water monitoring is required for the long-term care at the disposal site, then it should be conducted in two phases, screening monitoring and evaluative monitoring. Screening monitoring will be designed to detect changes in ground water quality attributable to the tailings. If a significant change is apparent, evaluative monitoring should be initiated. Evaluative monitoring will be more extensive and will quantify the rate and magnitude of the change of conditions. When EPA finalizes the ground water protection standards, modifications may be necessary. See the discussion on the Uranium Mill Tailings Remedial Action Amendments Act of 1988 for more details.

Aerial photographs of the Title I disposal sites should be taken immediately upon completion of the construction and after the permanent surveillance features have been installed. The photographs will be used to prepare the final topographic map and as-built drawings and will be kept in the permanent site file for future reference, should a problem develop at the site. In the unlikely event that a problem (such as erosion) should occur, the photographs provide baseline information about site conditions. New aerial photographs would be taken if it becomes necessary to monitor a problem over a long period of time.

The LTSP should also describe the procedures the long-term licensee would follow if contingency or emergency repairs were needed at the disposal site due to extreme natural events or purposeful intrusion.

The conduct of custodial activities such as grass mowing or fence repair are not precluded. If the long-term care licensee desires to conduct this type of custodial activity (termed "planned maintenance" in the DOE guidance document), the activities should be described in the LTSP. However, it should be noted that planned maintenance of this type cannot be relied upon to ensure compliance with the EPA standards.

Title II

Much of the guidance described for Title I disposal sites can be applied to the Title II disposal sites. However, the DOE guidance document includes additional information and recommendations for which the applicability must be evaluated on a site specific basis for Title II disposal sites. Specific requirements for Title II sites are addressed in Appendix A of 10 CFR part 40. For Title II sites, criterion 10 of Appendix A requires the existing licensee to pay a minimum charge of $250,000 (1978 dollars) to cover the costs of long-term surveillance. The minimum charge was based on an annual inspection by the governmental agency retaining custody of the site to confirm the integrity of the stabilized tailings and to determine the need, if any, for maintenance and/or monitoring. The actual amount of this charge will be set based on a site specific evaluation, which should be included as part of the existing licensee's reclamation plan for the site. This charge is not intended to cover the cost of contingency (emergency) repairs. Because the tailings and wastes should be disposed of without the need for any active maintenance, the annual inspection should be completed in 1 to 2 days per site. Post-closure maintenance activities that are relied upon to comply with Appendix A closure standards can only be authorized by considerations of alternatives under Section 84(c) of the Atomic Energy Act of 1954, as amended. In such cases, the minimum charge for long-term surveillance to the existing licensee will be increased accordingly to provide for this maintenance. The basis for the minimum charge and the annual inspection is discussed in detail in the Final Generic Environmental Impact Statement on uranium milling (NUREG-0706).

The custodial agency will prepare an LTSP for each disposal site using input from the existing licensee's reclamation plan, including the evaluation of long-term surveillance needs. Thus, important site information will be transferred from the existing licensee to the custodial agency. The existing licensee, however, will not be required to prepare the LTSP. In addition the LTSP will not affect the

[1]Copies of NUREG-0706 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level) of the Gelman Building, Washington, DC.

long-term surveillance charge paid by the existing licensee (the LTSP may also reflect additional site-specific activities which are not to be reflected in the long-term care charge, but are voluntarily committed to by the custodial agency).

VI. Future Uses of the Disposal Site

UMTRCA provides for potential future uses of the disposal site. For a Title I disposal site, it provides that the Secretary of the Interior, with the concurrence of both the Secretary of Energy and the NRC, may dispose of any subsurface mineral rights. If this occurs, the NRC will issue a specific license to the Secretary of the Interior to assure that the tailings are not disturbed, or if disturbed are restored to a safe and environmentally sound condition. At a Title I processing site, when tailings are moved, once the surface remedial actions are completed, surface rights will be available as long as the use does not impede future ground water restoration activities.

For a Title II disposal site the same provisions as above apply with the following two differences. First, surface as well as subsurface estates may be available for use. Second, although the request to use these rights may be received from any person, if permission is granted, the person who transferred the land to the Federal or State Government shall receive the right of first refusal with respect to this use of the land.

Environmental impacts will be evaluated prior to any action granting the use of surface or subsurface estates.

VII. Comments on the Proposed Rulemaking

The Commission received six (6) letters commenting on the proposed rule. Copies of these letters and an analysis of the comments are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. Comments were received from two States, a company having uranium interests, and three Federal Agencies (the Department of Energy, the Environmental Protection Agency, and the Department of the Interior). The most significant comments are summarized below.

There was concern that a current licensee may be placed in a position of having to delay final closure and turnover of its disposal site to the Federal government if an acceptable Long-Term Surveillance Plan has not been submitted. This could cause increased costs to the licensee and thereby have a significant impact on the private sector.

The proposed rule package discussed two options available to the Commission to maintain regulatory control of the disposal site in the above situation. The NRC could delay termination of the license or could issue specific orders to the intended custodial agency. We agree with the commenter that an indefinite delay in terminating the license could increase the impacts to an existing licensee. Therefore, we have clarified the rule to acknowledge that if significant financial impacts are anticipated due to lack of action on the custodial agency's part, issuing an order would be our prime option. However, the Commission wants to retain the option of not terminating the existing license, if this might be appropriate for a relatively short period.

A State commenter was concerned that the rule does not provide for explicit State concurrence in an LTSP prepared by the Federal government.

The proposed rule did not provide for specific State concurrence in the NRC licensing actions, because the State has no regulatory authority under the Atomic Energy Act during the long-term care period. The State, as a member of the general public, may comment on any action to be taken by the NRC. We would like to note that, for the Title II sites, the State, at its option, can be the custodial governmental agent and, therefore, become the responsible party to prepare and implement the LTSP under the general license issued by the NRC.

If significant environmental consequences occur at either Title I or Title II disposal sites in the future, the failure will not likely be as a result of the LTSP, but will most likely be as a result of inadequate design or construction. The States have been and will continue to be integrally involved in the design and construction phase of remedial action or closure. The commenter appears to over estimate the purpose of the LTSP which is the surveillance of the reclaimed or closed site, not the performance of significant maintenance work. The performance of significant work at licensed disposal sites under this regulation requires specific authorization from the NRC.

The Department of Energy indicated that the proposed rule was not clear regarding how the two step licensing process (Title I only) works in relationship to processing sites that are stabilized in place versus those that are relocated.

There will be a difference in how the two-step licensing approach will be used depending upon whether the residual radioactive material has been stabilized in place or moved. The two-step approach, as it will apply for this LTSP and licensing, will only be used for materials stabilized in place. For materials that are moved to a separate disposal site there will be no ground water restoration at the new site under normal, expected conditions and the old site will not have an LTSP or license associated with it. When DOE moves a site, the original processing site will be cleaned-up to meet EPA standards for unrestricted use. NRC will not license these processing sites.

For residual radioactive materials stabilized in place and requiring additional ground water restoration, the LTSP will cover all the elements identified in the rule, except for detailed ground water restoration actions. The LTSP may still require ground water monitoring to ensure that actions taken for ground water restoration are not affecting the integrity of the stabilized pile. For example, if ground water restoration activities are impacting leaching through the pile, monitoring under the LTSP should be able to identify this and trigger any necessary corrective actions.

In summary, regardless of whether residual radioactive material is relocated or not, the custodial agency will be an NRC general licensee at the disposal site only. If ground water restoration at the processing site is necessary when the material is relocated, this will have no impact on the general license for the disposal site. If ground water restoration is necessary for a site stabilized in place, then licensing will be done in two steps.

DOE requested that reporting requirements for Title I sites be comparable to those for Title II sites -- 10 CFR part 40 Appendix A, Criterion 12. The wording in the proposed rule provided DOE with flexibility in developing reporting requirements for Title I sites. However, since DOE requested this change and it would provide for reports at least as frequently as under the proposed rule, it has been added to the final rule.

In the Advance Notice of Proposed Rulemaking, the Commission indicated that before the general license could become effective at a disposal site the NRC must "receive" an LTSP. In the proposed rule, the wording was changed to show that the Commission must "accept" the LTSP. DOE did not support this change. NRC has made this change to provide a better level of control over the licensing process. If the NRC receives an acceptable LTSP, the long-term care licensee would not be impacted in any way. If an unacceptable LTSP is received, this provision provides

the NRC an opportunity to work with the long-term care licensee to correct the deficiencies prior to licensing.

NRC adopted a number of DOE recommendations that provide additional clarity in the notice and rule. These changes included, for example, clarifying when the word "site" specifically refers to a disposal or processing site, providing additional information for Title I sites on Indian lands, using the term "remedial action" for Title I sites, noting in the rule that there is no termination date to the general licenses, clarifying the use of aerial photographs, and other wording changes that provided more specific information.

VIII. EPA Clean Air Act Activities

EPA has published new air effluent regulations for radon and other radioactive effluents from uranium mill tailings as part of the voluntary remand of standards developed under section 112 of the Clean Air Act (CAA) (54 FR 51654, December 15, 1989). The EPA regulations include a radon emission standard that would apply to both Title I and Title II disposal sites after closure that must be confirmed by measurement. Other NRC and EPA regulations are design standards. Once measurements confirm that the site meets CAA standards and long-term stabilization has been completed, the tailings are no longer subject to EPA regulations under the CAA. Prior to closure, it isentirely possible that the CAA standards could result in EPA ordered modifications to sites that already meet current design standards. The potential for conflicting EPA and NRC/Agreement State regulatory programs prior to the long-term care period will require close coordination between the two agencies and with States, depending on CAA delegations.

IX. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule establishes general licenses for long-term care of uranium or thorium mill tailings disposal sites by another Federal agency or State. The licensing action will be done after remedial action or site closure is completed, and would ensure that disposal sites remain in good condition. If unexpected repairs ε re ever required, the long-term care licensee will be responsible to make the necessary repairs. The Commission will evaluate at the time such action is deemed necessary whether there is a need to prepare a separate environmental assessment.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-260. Telephone (301) 492-3877.

X. Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0020.

XI. Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mail Stop NLS-260.

XII. Regulatory Flexibility Certification Statement

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. This rule will apply only to a Federal agency or an appropriate State. Although small entities may be requested to consult with government agencies in developing LTSPs, effort associated with such consultation is required under the criteria in Appendix A to 10 CFR part 40, which were previously promulgated by the Commission. Therefore, a Regulatory Flexibility Analysis is not required and has not been prepared.

XIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 40

Criminal penalty, government contracts, Hazardous materials-transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is adopting the following amendments to 10 CFR part 40.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 40.5, 40.9, 40.25(c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 40.1 is revised to read as follows:

§ 40.1 Purpose.

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and

provide for the terms and conditions upon which the Commission will issue these licenses. These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipments of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in part 110 of this chapter.)

(b) The regulations contained in this part are issued under the Atomic Energy Act of 1954, as amended (68 Stat. 919), Title II of the Energy Reorganization Act of 1974, as amended (88 Stat. 1242), and Titles I and II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended (42 U.S.C. 7901).

3. In § 40.2a, paragraph (a) is revised to read as follows:

§ 40.2a Coverage of inactive tailings sites.

(a) Prior to the completion of the remedial action, the Commission will not require a license pursuant to 10 CFR Chapter I for possession of residual radioactive materials as defined in this part that are located at a site where milling operations are no longer active, if the site is covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. After remedial actions are completed, the Commission will license the long-term care of sites, where residual radioactive materials are disposed, under the requirements set out in § 40.27.

* * * * *

4. Section 40.3 is revised to read as follows:

§ 40.3 License requirements.

A person subject to the regulations in this part may not receive title to, own, receive, possess, use, transfer, provide for long-term care, deliver or dispose of byproduct material or residual radioactive material as defined in this part or any source material after removal from its place of deposit in nature, unless authorized in a specific or general license issued by the Commission under the regulations in this part.

5. In § 40.4, the definition *Residual radioactive material* is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Residual radioactive material means: (1) Waste (which the Secretary of Energy determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and (2) other waste (which the Secretary of Energy determines to be radioactive) at a processing site which relates to such processing, including any residual stock of unprocessed ores or low-grade materials. This term is used only with respect to materials at sites subject to remediation under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

6. In § 40.7, paragraph (f) is revised to read as follows:

§ 40.7 Employee protection.

* * * * *

(f) The general licenses provided in §§ 40.21, 40.22, 40.25, 40.27, and 40.28 are exempt from paragraph (e) of this section.

7. Section 40.20 is revised to read as follows:

§ 40.20 Types of licenses.

(a) Licenses for source material and byproduct material are of two types: general and specific. Licenses for long-term care and custody of residual radioactive material at disposal sites are general licenses. The general licenses provided in this part are effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons. Specific licenses are issued to named persons upon applications filed pursuant to the regulations in this part.

(b) Section 40.27 contains a general license applicable for custody and long-term care of residual radioactive material at uranium mill tailings disposal sites remediated under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

(c) Section 40.28 contains a general license applicable for custody and long-term care of byproduct material at uranium or thorium mill tailings disposal sites under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended.

8. New §§ 40.27 and 40.28 are added to read as follows:

§ 40.27 General license for custody and long-term care of residual radioactive material disposal sites.

(a) A general license is issued for the custody of and long-term care, including monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions necessary to comply with the standards promulgated under section 275(a) of the Atomic Energy Act of 1954, as amended, for disposal sites under Title I of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The license is available only to the Department of Energy, or another Federal agency designated by the President to provide long-term care. The purpose of this general license is to ensure that uranium mill tailings disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after remedial action has been completed.

(b) The general license in paragraph (a) of this section becomes effective when the Commission accepts a site Long-Term Surveillance Plan (LTSP) that meets the requirements of this section, and when the Commission concurs with the Department of Energy's determination of completion of remedial action at each disposal site. There is no termination of this general license. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each LTSP must include--

(1) A legal description of the disposal site to be licensed, including documentation on whether land and interests are owned by the United States or an Indian tribe. If the site is on Indian land, then, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Indian tribe and any person holding any interest in the land shall execute a waiver releasing the United States of any liability or claim by the Tribe or person concerning or arising from the remedial action and holding the United States harmless against any claim arising out of the performance of the remedial action;

(2) A detailed description, which can be in the form of a reference, of the final disposal site conditions, including existing ground water characterization and any necessary ground water protection activities or strategies. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs. If the disposal site has continuing aquifer restoration requirements, then the licensing process will be completed in two steps. The first step includes all items other than ground water restoration. Ground water monitoring, which would be addressed in the LTSP, may still be required in this first step to assess performance of the

tailings disposal units. When the Commission concurs with the completion of ground water restoration, the licensee shall assess the need to modify the LTSP and report results to the Commission. If the proposed modifications meet the requirements of this section, the LTSP will be considered suitable to accommodate the second step.

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in Appendix A, criterion 12 of this part), frequency and extent of ground water monitoring if required, appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

(c) The long-term care agency under the general license established by paragraph (a) of this section shall --

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

(4) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(5) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the disposal site, even if the action is required by a State or another Federal agency.

(d) As specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, may sell or lease any subsurface mineral rights associated with land on which residual radioactive materials are disposed. In such cases, the Commission shall grant a license permitting use of the land if it finds that the use will not disturb the residual radioactive materials or that the residual radioactive materials will be restored to a safe and environmentally sound condition if they are disturbed by the use.

(e) The general license in paragraph (a) of this section is exempt from parts 19, 20, and 21 of this chapter, unless significant construction, actions, or repairs are required. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these parts apply for the actions and comply with the appropriate requirements.

§ 40.28 General license for custody and long-term care of uranium or thorium byproduct materials disposal sites.

(a) A general license is issued for the custody of and long-term care, including monitoring, maintenance, and emergency measures necessary to protect the public health and safety and other actions necessary to comply with the standards in this part for uranium or thorium mill tailings sites closed under Title II of the Uranium Mill Tailings Radiation Control Act of 1978, as amended. The licensee will be the Department of Energy, another Federal agency designated by the President, or a State where the disposal site is located. The purpose of this general license is to ensure that uranium and thorium mill tailings disposal sites will be cared for in such a manner as to protect the public health, safety, and the environment after closure.

(b) The general license in paragraph (a) of this section becomes effective when the Commission terminates, or concurs in an Agreement State's termination of, the current specific license and a site Long-Term Surveillance Plan (LTSP) meeting the requirements of this section has been accepted by the Commission. There is no termination of this general license. If the LTSP has not been formally received by the NRC prior to termination of the current specific license, the Commission may issue a specific order to the intended custodial agency to ensure continued control and surveillance of the disposal site to protect the public health, safety, and the environment. The Commission will not unnecessarily delay the termination of the specific license solely on the basis that an acceptable LTSP has not been received. The LTSP may incorporate by reference information contained in documents previously submitted to the Commission if the references to the individual incorporated documents are clear and specific. Each LTSP must include--

(1) A legal description of the disposal site to be transferred (unless transfer is exempted under provisions of the Atomic Energy Act, § 83(b)(1)(A)) and licensed;

(2) A detailed description, which can be in the form of a reference of the final disposal site conditions, including existing ground water characterization. This description must be detailed enough so that future inspectors will have a baseline to determine changes to the site and when these changes are serious enough to require maintenance or repairs;

(3) A description of the long-term surveillance program, including proposed inspection frequency and reporting to the Commission (as specified in appendix A, Criterion 12 of this part), frequency and extent of ground water monitoring if required, appropriate constituent concentration limits for ground water, inspection personnel qualifications, inspection procedures, recordkeeping and quality assurance procedures;

(4) The criteria for follow-up inspections in response to observations from routine inspections or extreme natural events; and

(5) The criteria for instituting maintenance or emergency measures.

(c) The long-term care agency who has a general license established by paragraph (a) of this section shall --

(1) Implement the LTSP as described in paragraph (b) of this section;

(2) Care for the disposal site in accordance with the provisions of the LTSP;

(3) Notify the Commission of any changes to the LTSP; the changes may not conflict with the requirements of this section;

(4) Guarantee permanent right-of-entry to Commission representatives for the purpose of periodic site inspections; and

(5) Notify the Commission prior to undertaking any significant construction, actions, or repairs related to the disposal site, even if the action is required by a State or another Federal agency.

(d) Upon application, the Commission may issue a specific license, as specified in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, permitting the use of surface and/or subsurface estates transferred to the United States or a State. Although an application may be received from any person, if permission is granted, the person who transferred the land to DOE or the State shall receive the right of first refusal with respect to this use of the land. The application must demonstrate that--

(1) The proposed action does not endanger the public health, safety, welfare, or the environment;

(2) Whether the proposed action is of a temporary or permanent nature, the site would be maintained and/or restored to meet requirements in

Appendix A of this part for closed sites; and

(3) Adequate financial arrangements are in place to ensure that the byproduct materials will not be disturbed, or if disturbed that the applicant is able to restore the site to a safe and environmentally sound condition.

(e) The general license in paragraph (a) of this section is exempt from parts 19, 20, and 21 of this Chapter, unless significant construction, actions, or repairs are required. If these types of actions are to be undertaken, the licensee shall explain to the Commission which requirements from these parts apply for the actions and comply with the appropriate requirements.

(f) In cases where the Commission determines that transfer of title of land used for disposal of any byproduct materials to the United States or any appropriate State is not necessary to protect the public health, safety or welfare or to minimize or eliminate danger to life or property (Atomic Energy Act, § 83(b)(1)(A)), the Commission will consider specific modifications of the custodial agency's LTSP provisions on a case-by-case basis.

9. Appendix A, Criterion 12 is revised to read as follows:

Appendix A to part 40 - Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

* * * * *

Criterion 12--The final disposition of tailings, residual radioactive material, or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency responsible for long-term care of the disposal site to confirm its integrity and to determine the need, if any, for maintenance and/or monitoring. Results of the inspections for all the sites under the licensee's jurisdiction will be reported to the Commission annually within 90 days of the last site inspection in that calendar year. Any site where unusual damage or disruption is discovered during the inspection, however, will require a preliminary site inspection report to be submitted within 60 days. On the basis of a site specific evaluation, the Commission may require more frequent site inspections if necessary due to the features of a particular disposal site. In this case, a preliminary inspection report is required to be submitted within 60 days following each inspection.

* * * * *

Dated at Rockville, Maryland this 24th day of October, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-25612 Filed 10-29-90; 8:45 am]

BILLING CODE 7590-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-83-AD; Amdt. 39-6786]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes, Post-Modification 255640

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires replacement of all main landing gear (MLG) door aluminum forward hinge fittings every 6,000 landings. This amendment is prompted by reports of in-service failures of the hinge fitting door jack attachment lugs. This condition, if not corrected, could result in the main landing gear (MLG) door failing to close when retracting the landing gear and subsequently exceeding the landing gear door design loads.

EFFECTIVE DATE: December 4, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe/DH/BH/HS 125 series airplanes, which requires replacement of all main landing gear (MLG) aluminum forward hinge fittings every 6,000 landings, was published in the **Federal Register** on June 1, 1990 (55 FR 22355).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but stated that the proposed 400-landing compliance time for replacement of aluminum forward hinge fittings that have exceeded 6,000 landings is not consistent with the compliance time specified in British Aerospace Service Bulletin 32-218, dated July 28, 1988. The FAA partially concurs. The service bulletin recommends that hinge fittings be replaced upon the accumulation of 6,000 landings, or within approximately one year for those that have exceeded 6,000 landings; and that repetitive visual inspections for cracks be conducted at 300-landing intervals until parts are available for replacement. British Aerospace had previously advised the FAA that the highest time Model BAe-125 in the United States has accumulated approximately 3,200 landings, and that these airplanes average approximately 400 landings per year. Therefore, the compliance time of 400 landings in this AD action was selected in order to be equivalent to the one-year compliance time recommended in the service bulletin for replacement of the hinge fittings that had exceeded 6,000 landings. The FAA determined that repetitive inspections to allow operation until parts are available need not be included in this AD, since U.S. operators will replace the fittings prior to accumulating 6,000 landings and there is no evidence at this time that there will be a parts availability problem. Should a parts availability problem arise in the future, the individual operator always has the option to request an alternate means of compliance in accordance with paragraph C. of this AD.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 420 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $7,260. Based on these figures, the total

cost impact of the AD on U.S. operators is estimated to be $3,586,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe/DH/BH/HS 125 series airplanes, post-modification 255640, certified in any category. Compliance is required as indicated, unless previously accomplished.

To ensure proper operation of the main landing gear (MLG) door, accomplish the following:

A. Prior to the accumulation of 6,000 landings on the right and left MLG door aluminum forward hinge fittings, or within the next 400 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 landings, replace the aluminum forward hinge fittings in accordance with British Aerospace Service Bulletin 32-218, dated July 28, 1988.

B. Replacement of an aluminum hinge fitting with a new stainless steel hinge fitting, in accordance with British Aerospace Service Bulletin 32-220-3176A, B, and C, dated September 2, 1988, terminates the requirements for the replacement of the hinge fittings required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 4, 1990.

Issued in Renton, Washington, on October 18, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-25586 Filed 10-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-12]

Establishment of Control Zone, Glynco Jetport, Brunswick, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: The effective date of the final rule as published in the **Federal Register** on October 16, 1990 (55 FR 41853) contained a typographical error. In lieu of December 13, 1991, the correct date is December 13, 1990.

Issued in East Point Georgia, on October 19, 1990.

Don Cass,

Acting Manager, Air Traffic Division Southern Region

[FR Doc. 90-25590 Filed 10-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-16]

Revision of Transition Area, Wilkesboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Wilkesboro, NC, transition area. On June 18, 1990, the old Wilkes County Airport was closed concurrent with opening the new Wilkes County Airport. The new airport is located approximately 6.7 nautical miles northeast of the old site and will be served by a localizer standard instrument approach procedure (SIAP) to Runway 1. This action will center the transition area on the new airport and provide an arrival area extension to the south to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the SIAP.

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On August 29, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Wilkesboro, NC, transition area (55 FR 35322). The proposed action would center the transition area on the new Wilkes County Airport and provide an arrival area extension for airspace protection of IFR aircraft executing the planned localizer SIAP to Runway 1. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Wilkesboro, NC, transition area. The transition area will be centered on the new Wilkes County Airport which is approximately 6.7 nautical miles northeast of the old airport which has been closed. An arrival area extension south of the airport will provide

additional airspace protection for IFR aircraft executing the localizer SIAP to Runway 1.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Wilkesboro, NC [Revised]

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Wilkes County Airport (latitude 36°13'21"N, longitude 81°05'56"W); within 3.5 miles each side of the Runway 1 localizer course, extending from the 12.5-mile radius area to 9.5 miles south of the LOM (latitude 36°06'46"N, longitude 81°05'54"W), excluding those portions that coincide with the West Jefferson and Elkin, NC, transition areas.

Issued in East Point, Georgia, on October 18, 1990.

Don Cass,

Acting Manager, Traffic Division, Southern Region.

[FR Doc. 90–25591 Filed 10–29–90; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-28576]

Delegation of Authority to Director of Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing delegation of authority to permit the Director of the Division of Market Regulation to disclose directly to the Department of Treasury certain confidential information and documents regarding possible laundering of money through or by brokers or dealers, including broker-dealer compliance with the Currency and Foreign Transaction Reporting Act of 1970. With this authority, the Division can increase the effectiveness and efficiency of the Commission's role in the implementation of the Currency and Foreign Transaction Reporting Act of 1970.

EFFECTIVE DATE: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Furey or Michael T. Dorsey, Office of Self-Regulation Inspections, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, telephone (202) 272–7385.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission today has announced an amendment to Rule 30–3(a),[1] governing delegation of authority to the Director of the Division of Market Regulation ("Division Director") under the Securities Exchange Act of 1934 ("Exchange Act").[2] The amendment delegates to the Division Director authority to disclose to the Department of Treasury ("Treasury") certain information or documents deemed confidential by Rule 0–4 under the Exchange Act.[3] With this authority, the Division will be able to increase the effectiveness of the Commission's role in the implementation of the Currency and Foreign Transaction Reporting Act of 1970 ("Act" or "Bank Secrecy Act").[4]

II. Discussion

Under the Bank Secrecy Act, the Commission has the responsibility of assuring that broker-dealers comply with the Act.[5] To that end, the Commission promulgated Rule 17a–8 under the Exchange Act to require broker-dealers to comply with the reporting, recordkeeping and records retention requirements of the Act, as well as the related Treasury regulations.[6]

As part of its responsibilities, the Commission reports periodically to the Treasury on the status of broker-dealer compliance. Compliance with Rule 17a–8 and the Bank Secrecy Act is determined through the examination programs of the Commission and certain Self-Regulatory Organizations ("SROs") of which the broker-dealers are members.[7] The findings of these examinations are made available to Treasury by the Commission staff to the extent permitted by Rule 0–4. If Treasury requests more specific information or if the Commission staff determines that certain confidential information or documents should be referred to Treasury immediately, under Rule 0–4 the staff must obtain authorization from the Commission or the General Counsel.

III. Delegation of Authority

In the interest of efficiency, the Commission is amending Rule 30–3(a) under its rules concerning Organization and Program Management to delegate authority to the Division Director to disclose to the Treasury information and documents regarding possible laundering of money through or by brokers or dealers, including broker-dealer compliance with the Bank Secrecy Act. To the extent that the information or documents are obtained through the Division's broker-dealer examination program under section 17 of the Exchange Act, Rule 0–4 prohibits

[1] 17 CFR 200.30–3(a).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.0–4. Rule 0–4 prohibits the Commission staff from making public information or documents obtained by officers or employees in the course of broker-dealer examinations or investigations unless authorized by the Commission or the General Counsel, acting pursuant to delegated authority.

[4] Pub. L. 91–508, 84 Stat. 1114; 12 U.S.C. 1730d, 1829b, 1951–1959, 31 U.S.C. 1051–1122.

[5] *See* 31 U.S.C. 5318 and 31 CFR 103.46(b)(6).

[6] 17 CFR 240.17a–8. *See* Recordkeeping by Brokers and Dealers, Securities Exchange Act Release No. 18321 (Dec. 10, 1981), 46 FR 61454 (Dec. 17, 1981).

[7] The Self-Regulatory Organizations principally involved in the Commission's determination of broker-dealer compliance with Rule 17a–8 and the Bank Secrecy Act are the New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc.

the direct transfer of the information or the documents to Treasury. Before the information and documents can be sent to Treasury, the Commission or the General Counsel must determine that such a transfer is not contrary to the public interest.

Delegating the Division Director the authority to furnish directly to Treasury information and documents concerning money laundering and Act compliance, otherwise deemed confidential by Rule 0–4, will enable the Commission staff to cooperate with the Treasury more effectively. In addition, the amendment will help conserve the resources of the Commission and the Division as the staff may avoid the time consuming process of seeking Commission authorization before reporting more specifically on broker-dealer compliance with the Bank Secrecy Act.

In accordance with section 553(b)(A) of the Administrative Procedure Act,[8] the Commission finds that this amendment relates solely to agency organization, procedure or practice and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, as well as publication of the amendment before its effective date.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure; Freedom of information; Privacy; and Securities.

IV. Statutory Basis and Text of Proposed Rule Amendments

For the reasons set out in the preamble, the Commission is amending part 200 of chapter II of title 17 of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for part 200, subpart A, continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

2. By revising paragraph (a)(38) to § 200.30–3 to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(38) To disclose:

(i) To the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the state banking authorities, information and documents deemed confidential regarding registered clearing agencies and registered transfer agents; and

(ii) To the Department of Treasury, information and documents deemed confidential regarding possible laundering of money through or by brokers or dealers, including compliance by brokers or dealers with the Currency and Foreign Transactions Reporting Act of 1970, as amended.

* * * * *

By the Commission.

Dated: October 24, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25572 Filed 10–29–90; 8:45 am]

BILLING CODE 8010–01–M

[8] 5 U.S.C. 553(b)(A).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Annual Users Fee for Customs Broker's Permit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date of broker's user fee.

SUMMARY: This document advises Customs brokers that for 1991 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association, or corporate broker is due by January 2, 1991. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Raymond R. Janiszewski, Chief, Broker Compliance and Evaluation Branch (202) 566–5307.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker's permit held by an individual, partnership, association, or corporate broker. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Section 111.96, Customs Regulations, provides that the fee is payable for each calendar year in each district where a broker has a permit to do business by the due date which will be published in the **Federal Register** annually.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514), provides that notices of the date on which payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 1991 the due date for payment of the user fee is January 2, 1991. It is expected that annual user fees for brokers for subsequent years will be due on or about the first of January each year.

Dated: October 24, 1990.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 90–25592 Filed 10–29–90; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing approval, with certain exceptions, of a proposed amendment to the Missouri permanent regulatory program (hereinafter referred to as the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was submitted to OSM on July 21, 1989, and pertains to previously mined areas, permit application minimum requirements for information on environmental resources, permit application minimum requirements for reclamation and operation plans, requirements for permits for special categories of mining and reclamation, approval of permit applications, underground mining application requirements for reclamation and operation plans, definitions, State employee financial interests, and individual civil penalty assessments. The amendment revises the State program to be consistent with corresponding Federal standards.

EFFECTIVE DATE: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, Missouri 64105, telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

The Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. Information pertinent to the general background and revisions to the Missouri program, as well as the Secretary's findings, the disposition of comments, and the conditions of approval, can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning amendments to the program are codified at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of Amendment

On July 21, 1989, Missouri submitted to OSM proposed regulatory revisions to its approved program (Administrative Record No. 454). Missouri proposed regulatory revisions to Division 40 (Land Reclamation Commission) title 10 (Department of Natural Resources) of the Missouri Code of State Regulations (CSR). Specifically it proposes to revise 10 CSR 40-4.080(1) and (2), Previously Mined Areas; 10 CSR 40-6.040(11)(E), Minimum Requirements for Information on Environmental Resources; 10 CSR 40-6.050(5)(C), Surface Mining Permit Application—Minimum Requirements for Reclamation and Operations Plan; 10 CSR 40-6.060(2)(B) and (C), Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations; 10 CSR 40-6.070(7)(A)3 and (8)(M), Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions; 10 CSR 40-6.120(11), Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 10 CSR 40-8.010(1)(A), Definitions; 10 CSR 40-8.045, Individual Civil Penalty Assessment to the Directors, Officers, or Agents of a Corporation; and 10 CSR 40-8.060(8)(B), State Employees Financial Interest.

The amendment proposed by Missouri responds to a November 3, 1988, letter (Administrative Record No. MO-406) from OSM in accordance with 30 CFR 732.17(d) stating the inadequacy of certain program areas.

OSM announced receipt of the proposed amendment in the August 18, 1989, Federal Register (54 FR 34190) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the substantive adequacy of the proposed amendment. No public comments were received by September 18, 1989, the close of the comment period. The public hearing, scheduled for September 12, 1989, was not held because no one requested an opportunity to testify.

On October 27, 1989, following a thorough review of the proposed amendment, OSM notified Missouri of several concerns it had with the proposed regulations (Administrative Record No. MO-479). The concerns included assurance that: (1) All sediment control structures are designed to meet effluent limits in a manner no less effective than the Federal regulations; (2) the Endangered Species Act of 1973 as amended is met; and (3) the definition of previously mined area be no less effective than the Federal regulation. On November 3, 1989, Missouri informed OSM that it would address these concerns in a future rulemaking (Administrative Record No. MO-483).

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that with certain exceptions, the amendment submitted by Missouri on July 21, 1989, meets the requirements of SMCRA and 30 CFR chapter VII as discussed below.

1. Substantive Revisions to Missouri's Proposed Regulations That Are Substantially Identical to the Counterpart Federal Regulations

Missouri proposed revisions to the following regulations that are substantive in nature and contain language substantially identical to the corresponding Federal regulations: 10 CSR 40-4.080 (1) and (2), counterpart Federal regulations at 30 CFR 816.106—backfilling and grading previously mined areas; 10 CSR 40-6.040(11)(E) 2. and 3., counterpart Federal regulations at 30 CFR 784.21(a)(2) (ii) and (iii)—fish and wildlife resource information; 10 CSR 40-6.050(5)(C), counterpart Federal regulations at 30 CFR 780.14(c)—operation plan-maps and plans; 10 CSR 40-6.060(2) (B) and (C), counterpart Federal regulations at 30 CFR 785.15 (b) and (c)—steep slope mining; 10 CSR 40-6.070(7)(A)3. and (8)(M), counterpart Federal regulations at (respectively) 30 CFR 780.16(c)—fish and wildlife information; and 773.15(c)(11)—review of permit applications; 10 CSR 40-6.120(11), counterpart Federal regulations at 30 CFR 784.20—subsidence control plan; 10 CSR 40-8.060(8)(B), counterpart Federal regulations at 30 CFR 705.4(d)—employee financial interests and responsibilities; and 10 CSR 40-8.045, counterpart Federal regulations at 30 CFR part 846—individual penalties. The Director, therefore, finds that these proposed revisions to Missouri's regulations are no less effective than the corresponding Federal regulations, and is approving the proposed revisions.

2. Fish and Wildlife Resource Information

At 10 CSR 40-6.040(11)(E), Missouri proposes regulations that would require site-specific resource information on species or habitats when the permit or adjacent area is likely to include: (1) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) or species or habitats protected by the State of Missouri as listed in the current publication of *Rare and Endangered Species of Missouri*, (2) habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes or reproduction and wintering areas, or (3) other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

The Federal regulations at 30 CFR 784.21(a)(2) place these same substantive requirements. However, Missouri's citation to the Endangered Species Act of 1973 at subsection (1)(E)1. fails to include "as amended (16 U.S.C. 1531 *et seq.*)" per the Federal regulation at 30 CFR 784.21(a)(2)(i). This makes Missouri's citation more limiting as it does not assure that amendments to that Act would be included. In its November 3, 1989, reply to the OSM letter of October 27, 1989, Missouri agreed to correct the citation in future rulemaking.

The Director therefore finds Missouri's proposed regulation to be less effective than the Federal regulation in that it does not provide "as amended (16 U.S.C. 1531 *et seq.*)" at its citation of the Endangered Species Act of 1973. The Director is requiring Missouri to amend its regulation at 10 CSR 40-6.040(11)(E)1. to make it no less effective than the Federal regulations.

3. Definitions

(a) Missouri's rule at 10 CSR 40-8.010(1)(A)5. presently states, in pertinent part, that: "The affected area shall include every road used for the purpose of access to, or for hauling coal

to or from, surface coal mining and reclamation operations, unless the road—A. Was designated as a public road pursuant to the laws of the jurisdiction in which it is located; B. Is maintained with public funds and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and C. There is substantial (more than incidental) public use." Missouri proposes to delete this language, and in its stead proposes to add the following: "Public roads may be included in the affected area and regulated on a case-by-case basis, as determined by the extent of mining-related use."

The language that Missouri proposes to delete is identical to the Federal definition of "affected area" at 30 CFR 701.5. However, in the case of *In re: Permanent Surface Mining Regulation Litigation,* 620 F. Supp. 1519 (D.D.C. 1985), *modified sub nom., National Fed'n* v. *Hodel,* 839 F.2d 694 (DC Cir. 1988), the above language was challenged to the extent that it imposed, at subparagraph (c), the "more than incidental public use" test in determining whether a road falls outside of the definition of "affected area". As a result of this challenge, the court remanded the rule and stated that in determining whether a public road should be permitted, the extent of mining-related use rather than the public use should be considered, and that if the effect of the mining-related use is only *de minimis,* or relatively minor, then the public road is not part of the surface coal mining operation and does not have to be permitted. *See* 620 F. Supp. 1519, 1582. In response to the court's ruling, on November 20, 1986, OSM suspended its definition of "affected area" at 30 CFR 701.5 "to the extent that it excludes public roads which are included in the definition of "surface coal mining operations". 51 FR 41925, 41953. OSM has since stated that the determination of whether a particular public road is included in the definition of "surface coal mining operations" must be made on a case-by-case basis. 53 FR 45190, 45193, November 8, 1988. For these reasons, the Director is approving Missouri's proposed definition; *however,* this approval is conditioned upon Missouri interpreting its proposed definition ("roads *may* by included," emphasis added) as requiring the regulatory authority to analyze whether roads in the vicinity of the mine must be regulated on the basis of the criteria set forth in its definition at 10 CSR 40–8.010(1)(A)5. as explicated above. Provided Missouri interprets its proposed definition in this manner, the Director finds the proposed definition of "affected area" to be no less effective than the corresponding Federal definition as modified by *In re: Permanent Surface Mining Regulation Litigation* and is approving the proposed change.

(b) At 10 CSR 40–8.010(1)(A)18., Missouri proposes to modify its definition of "coal processing plant" or "coal preparation plant" to mean "a facility where coal is subject to chemical or physical processing or cleaning, concentrating or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; and roads, railroads and other transport facilities."

The modifications proposed by Missouri make its definition substantively the same as the Federal definition of "coal preparation plant" at 30 CFR 701.5. The Director finds that Missouri's proposed definition of "coal processing plant" or "coal preparation plant" at 10 CSR 40–8.010(1)(A)18. is no less effective than the Federal definition of "coal preparation plant" at 30 CFR 701.5. The Director also finds that Missouri has satisfied a required program amendment at 30 CFR 925.16(m)(4), (discussed in the October 31, 1988, **Federal Register** (53 FR 43866)) requiring the State to provide a definition as effective as the Federal regulation requirements. The Director is therefore removing this required program amendment, and is approving Missouri's proposed definition as being no less effective than the Federal regulations.

(c) At 10 CSR 40–8.010(1)(A)71., Missouri proposes to define "previously mined areas" to mean "land previously mined or disturbed to facilitate mining on which there were no surface coal mining operations subject to the standards of the surface coal mining law." Missouri's proposed definition of "previously mined area" contains language substantively identical to that of the Federal definition at 30 CFR 701.5. However, in the case of *National Wildlife Fed'n* v. *Lujan,* 733 F. Supp. 419 (D.D.C. 1990), the court remanded the Federal definition because of two concerns. The first was whether "previously mined" means that mining occurred (1) Before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do the job. Rather, in such situations, the operator's duty is to eliminate the highwalls only to the "maximum extent technically practical." Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

The court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue." 733 F. Supp. at 438. Consequently, the court held that the date of enactment of SMCRA (August 3, 1977), "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." *Id.* at 441–442. With respect to the second issue, the court held that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." *Id.* at 441. Accordingly, the court remanded "the definition of previously mined area to the Secretary to correct both of the flaws identified above." *Id.* at 442.

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Missouri's proposed definition. Accordingly, OSM has evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court. Since Missouri's language is similar to the Federal regulation, it suffers from the same defects as the Federal regulation. Therefore, the Director finds the State's proposed definition to be inconsistent with SMCRA as interpreted by the court, and is not approving it to the extent that it (1) Provides or could be interpreted as providing that the reference date for "previously mined" is any date other than August 3, 1977 (the date of enactment of SMCRA), or (2) allows or could be interpreted as allowing lands which have once been fully and satisfactorily reclaimed to be reminded

and then only partially reclaimed. The Director will, pursuant to 30 CFR 732.17(d), inform Missouri of further regulatory changes after the Secretary promulgates a new definition.

IV. Public and Agency Comments

OSM solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h), comments were also solicited from various State and Federal agencies with an actual or potential interest in the Missouri program. The Missouri Division of Parks, Recreation, and Historic Preservation responded by stating that it had no objection to the proposed amendment (Administrative Record No. MO–466). The U.S. Environmental Protection Agency responded from both its Washington DC and Region VII offices (Administrative Record Nos. MO–473 and 459), by stating that it had no comment. No other State or Federal agencies offered any comments.

V. Director's Decision

Except for those provisions discussed in findings 2 and 3(c), the Director is approving Missouri's July 21, 1989, proposed amendment.

As discussed in finding 2 of this rule, the Director is requiring a program amendment at 30 CFR 925.16(d) concerning fish and wildlife resources information.

The Federal regulations at 30 CFR part 925 codifying decisions concerning the Missouri program are being amended to implement this decision. This approval is contingent upon the State's promulgation of the proposed revisions in the identical form submitted for OSM's review and approval. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, or OSM oversight of the Missouri program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to a State program are not enforceable by the State until approved by the Director. In the oversight of the Missouri program, the Director will recognize only statutes, regulations, and other materials that have been approved, together with any consistent implementing policies, directives, or other materials, and will require the enforcement by Missouri of only such provisions.

VII. Procedural Determinations

1. National Environmental Policy Act

The Secretary of the Interior has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order No. 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 1990.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 925—MISSOURI

1. The authority citation of part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (1) to read:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(1) With the exception of 10 CSR 40–6.040(11)(E)1., concerning fish and wildlife resources information, and 10 CSR 40–8.010(1)(A)71., concerning the definition of previously mined area, the following provisions of the Missouri Code of State Regulations (CSR) as submitted by Missouri on July 21, 1989, are approved effective October 30, 1990: 10 CSR 40–4.080 (1) and (2), previously mined areas; 10 CSR 40–6.040(11)(E) 2. and 3., fish and wildlife resources information; 10 CSR 40–6.050(5)(C), operations plan-maps and plans; 10 CSR 40–6.060(2) (B) and (C), steep slope mining; 10 CSR 40–6.070(7)(A)3. and 8(M), review of permit applications; 10 CSR 40–6.120(11), subsidence control plan; 10 CSR 40–8.010(1) (A)5. and (A)18., definitions; 10 CSR 40–8.045, individual civil penalty assessment to the directors, officers or agents of a corporation; and 10 CSR 40–060(8)(B), state employees financial interest.

3. Section 925.16 is amended by adding paragraph (d) and removing and reserving paragraph (m) to read:

§ 925.16 Required program amendments.

* * * * *

(d) By December 31, 1990, to be consistent with the Federal regulations at 30 CFR 784.21(a)(2)(i), Missouri must amend its program at 10 CSR 40–6.040(11)(E)1. to include in its cite of the Endangered Species Act of 1973 the reference "as amended (16 U.S.C. 1531 *et seq.*)."

* * * * *

[FR Doc. 90–25597 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3856–6]

Michigan; Schedule of Compliance for Modification of Michigan's Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Michigan's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, U.S. EPA promulgated amendments to the deadlines for State program modifications and published requirements for States to be placed on a compliance schedule to adopt necessary program modifications. U.S. EPA is today publishing a compliance schedule for Michigan to modify its program, in accordance with 40 CFR 271.21(g), to adopt Federal program modifications.

EFFECTIVE DATE: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Judy Greenberg, Michigan Regulatory Specialist, Office of RCRA, U.S. EPA, Region V, 230 South Dearborn Street, 5HR–JCK–13, Chicago, Illinois 60604, (312) 886–4179, (FTS: 8–886–4179).

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by U.S. EPA, if the Agency finds that the State program: (1) Is "equivalent" to the Federal program; (2) is "consistent" with the Federal program and other State programs; and (3) provides for adequate enforcement (section 3006(b), 42 U.S.C. 6926(b)). U.S. EPA regulations for final authorization appear at 40 CFR 271.1–271.25. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Michigan

Michigan received final authorization of its hazardous waste program on October 30, 1986 (see 51 FR 36804, October 16, 1986). Effective January 23, 1990, EPA granted authorization to Michigan for revisions to its hazardous waste program (see 54 FR 48608). Today, U.S. EPA is publishing a compliance schedule for Michigan to complete program revisions for the following Federal regulations:

—List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942–25953, July 9, 1987.
—Identification and Listing of Hazardous Waste, 52 FR 26012, July 10, 1987.
—Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314–44321, November 18, 1987. (Note this is an optional requirement, but the State intends to adopt it as part of this rulemaking.)
—Hazardous Waste Miscellaneous Units, 52 FR 46946–46965, December 10, 1987.
—Technical Corrections; Identification and Listing of Hazardous Waste, 53 FR 13382–13393, April 22, 1988.

The adoption deadline under 40 CFR 271.21 for these Federal regulations was July 1, 1989. However, the State's rulemaking has been delayed to address public concerns about portions of the rules. The State has taken the following steps so far in regards to promulgating the rule package:

1. An informal hearing on the proposed rules was held on April 27, 1989.
2. The proposed rule package and notice of the dates for public hearings was published in the October 1989 "Michigan Register".
3. Notice of the dates for public hearings was published in seven Michigan newspapers on November 28, 1989.
4. A public hearing was held on January 4, 1990, in Lansing, Michigan.
5. Public hearings were also held on January 9, 1990, in Marquette and Grayling, Michigan.
6. The public comment period closed on January 23, 1990. The Department of Natural Resources received 128 comments on the proposed rule package.
7. A report to the Joint Committee on Administrative Rules was completed on July 9, 1990, which summarized: (a) The actions taken by the Department of Natural Resources on the proposed rule package; (b) public comments received; and (c) the Department of Natural Resources' response to the public comments.
8. The Department of Natural Resources submitted the proposed rule package to the State Legislative Service Bureau on September 14, 1990.

The State has agreed to complete the needed program revisions to its authorized program according to the following schedule:

1. The Legislative Service Bureau will submit the proposed rule package to the Michigan Department of the Attorney General by November 1, 1990.
2. The Michigan Department of the Attorney General will submit the rule package to the legislative Joint Committee on Administrative Rules by December 1, 1990.
3. The Joint Committee on Administrative Rules will conduct a committee hearing and issue a determination. If the proposed rules are approved by the Joint Committee on Administrative rules, the rules will be submitted to the Michigan Secretary of State for codification in the Act 64 administrative rules by January 1, 1991.

Michigan expects to submit an application to U.S. EPA requesting authorization for the Federal regulations listed above by March 1, 1991.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: October 5, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–25636 Filed 10–29–90; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–6

[FTR Amendment 11]

Federal Travel Regulation; Increase in Maximum Reimbursement Limitations for Real Estate Sale and Purchase Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to a change of official station. The law (5 U.S.C. 5724a(a)(4)(B)) requires that the dollar limitations be updated effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component, for December of the preceding year over December of the second preceding year. This final rule will have a favorable impact on Federal employees authorized to relocate in the interest of the Government since it increases relocation allowance maximums.

EFFECTIVE DATE: This final rule is effective October 1, 1990, and applies to employees whose effective date of transfer is on or after October 1, 1990. For purposes of this regulation, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Raymond F. Price, Travel Management Division (FBT), FTS 557–1253 or Commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major

rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302–6

Government employees, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–6 is amended as set forth below.

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 302–6.2 is amended by revising paragraphs (g) (1) and (2) to read as follows:

§ 302–6.2 Reimbursable and nonreimbursable expenses.

* * * * *

(g) *Overall limitations.* The total amount of expenses that may be reimbursed is as follows:

(1) In connection with the sale of the residence at the old official station, reimbursement shall not exceed 10 percent of the actual sale price or $19,249, whichever is the lesser amount; and

(2) In connection with the purchase of a residence at the new official station, reimbursement shall not exceed 5 percent of the purchase price or $9,624, whichever is the lesser amount.

* * * * *

Dated: October 9, 1990.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 90-25561 Filed 10–29–90; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–177; RM–7116]

Radio Broadcasting Services; Susanville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 242C2 to Susanville, California, as that community's second local FM broadcast service, in response to a petition for rule making filed by Susan M. Ciborosky. *See* 55 FR 12869, April 6, 1990. Coordinates used for Channel 242C2 at Susanville are 40–26–55 and 120–44–20. With this action, the proceeding is terminated.

DATES: Effective December 10, 1990; the window period for filing applications on Channel 242C2 at Susanville, California, will open on December 11, 1990, and close on January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–177, adopted September 28, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 242C2 at Susanville.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25551 Filed 10–29–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–463; RM–6896]

Radio Broadcasting Services; Boyce, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C3 for Channel 272A at Boyce, Louisiana, and modifies the license for Station KBCE (FM) to specify operation on the new channel in response to a petition filed by Trinity Broadcasting Corporation. *See* 54 FR 45772, October 31, 1989. The coordinates for Channel 272C3 are 31–22–21 and 92–36–41.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–463, adopted September 28, 1990, and released October 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 272A and adding Channel 272C3 at Boyce.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25660 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-572; RM-7020]

Radio Broadcasting Services; Canaan, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 231C3 for Channel 231A at Canaan, Vermont, and modifies the construction permit for Station WKNW(FM) to specify the higher class channel, in response to a petition filed by Four Seasons Communications, Inc. *See* 54 FR 52424, December 21, 1989. Concurrence of the Canadian government for Channel 231C3 at Canaan, as a specially negotiated short-spaced allotment, has been obtained at coordinates 45-01-20 and 71-25-05.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-572, adopted September 29, 1990, and released October 25, 1990. The full text of this Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 231A and adding Channel 231C3 at Canaan.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25661 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-601; RM-7072]

Radio Broadcasting Services; Chase City, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 260C3 for Channel 260A to specify operation on the higher class channel, in response to a petition filed by Patricia B. Wagstaff. *See* 55 FR 885, January 10, 1990. The coordinates for Channel 260C3 are 36-48-13 and 78-21-02.

EFFECTIVE DATE: December 7, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-601, adopted September 27, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 260A and adding Channel 260C3 at Chase City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25550 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of apportionment; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces that amounts of the reserve are needed in domestic annual processing (DAP) operations for various fisheries and are being apportioned to these operations in the Bering Sea and Aleutian Islands Management (BSAI) Area. The species and species groups involved in this action are: Arrowtooth flounder, "other species," Atka mackerel, and squid. This action is necessary to promote optimum use of groundfish in the BSAI Area. It is intended to carry out the management objectives contained in the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan (FMP).

DATES: *Effective* from noon, Alaska local time, October 24, 1990. *Comments* are invited on or before November 9, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The FMP governs the groundfish fishery in the exclusive economic zone within the BSAI Area under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations codified at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI Area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within

the OY range and apportioned by subarea under § 675.20(a)(2).

Under § 675.20(a)(3), 15 percent of the TAC for each target species and the "other species" category is placed in a reserve, which is not designated by species or species group, and the remaining 85 percent of the TAC for each target species and the "other species" category is apportioned between domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF).

Under § 675.20(b)(1)(i), the Secretary will apportion reserve amounts to a target species or the "other species" category as needed, provided that the apportionments do not result in overfishing.

The initial specifications for each of these species were published in the **Federal Register** on January 16, 1990 (55 FR 1434). The TACs for these species or species groups were augmented by apportionments from the reserve as follows: Arrowtooth flounder (55 FR 26208, June 27, 1990), "other species" (55 FR 26208, June 27, 1990), and Atka mackerel (55 FR 26450, June 28, 1990).

Under § 675.20(b)(1)(i), the Secretary now finds that the DAP fishery in the BSAI Area requires the following additional amounts for the remainder of the year: arrowtooth flounder, 2,000 mt; "other species", 20,000 mt; Atka mackerel, 2,500 mt; and squid, 500 mt. Therefore, he apportions 25,000 mt for DAP fisheries in the BSAI Area as listed in Table 1. The apportionment to Atka mackerel does not reopen this fishery. The revised DAP fishery amounts are less than or equal to the acceptable biological catch (ABC) for the species listed; therefore, overfishing of those same species will not occur.

Under provisions of the Magnuson Act, DAP fisheries may harvest, without respecification of TAC within DAH, any amount of remaining DAH. In the BSAI, TAC equals DAH. Table 1 shows the apportionment of reserves under this action to DAH and the amounts of groundfish available for harvest by DAP.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay the effective date of this notice. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen participating in DAP fisheries operations who would otherwise be prohibited from fishing due to a premature closure. However, interested persons are invited to submit comments in writing to the previously cited address on or before November 9, 1990.

This action is taken under § 675.20(b)(1)(i), and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: October 24, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—APPORTIONMENT OF RESERVES IN THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA

[values are in metric tons]

Species		Current	This action	Revised
Arrowtooth flounder:				
ABC=106,500	DAP	7,800	+2,000	9,800
TAC=10,535	JVP	733	0	733
"Other species":				
ABC=55,000	DAP	4,250	+20,000	24,250
TAC=31,798	JVP	4,334	0	4,334
Atka mackerel:				
ABC=24,000	DAP	21,000	+2,500	23,500
TAC=23,500	JVP	0	0	0
Squid:				
ABC=10,000	DAP	425	+500	925
TAC=925	JVP	0	0	0
Total (BSAI):				
ABC=2,938,500	DAP	1,708,720	+25,000	1,733,720
TAC=2,000,000	JVP	257,992	0	257,992
	Reserves	33,288	−25,000	8,288

[FR Doc. No. 90-25621 Filed 10-25-90; 12:01 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 210
Tuesday, October 30, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 90-217]

Noxious Weeds; Notice of Public Meetings; Change in Meeting Dates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Rescheduling of public meetings.

SUMMARY: We are rescheduling two public meetings that will be held to obtain information concerning whether melaleuca should be designated as a Federal noxious weed.

DATES: Consideration will be given only to comments received on or before November 24, 1990. The public meetings will be held on November 16, 1990, in Fort Lauderdale, Florida, and on November 20, 1990, in San Francisco, California.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-158. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public meetings will be held in Room 422 of the Broward County Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida, on November 16, 1990; and in Room 1415, 630 Sansome Street, San Francisco, California, on November 20, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on September 24, 1990 (55 FR 39010-39011, Docket Number 90-158), we gave notice of two public meetings, to be held on October 29 and 31, for the purpose of obtaining information concerning whether *Melaleuca quinquenervia* (cav.) should be designated as a Federal noxious weed. We have received a request to reschedule the meetings to allow participation by certain interested persons who would not be able to attend on the previously announced dates. We are granting this request, since it appears that rescheduling the meetings will allow fuller participation by interested individuals. The new meeting dates are listed under the "DATES" section of this document. The meeting locations and the time of the meetings are unchanged.

Authority: Secs. 4, 10; 88 Stat. 2149, 2151; 7 U.S.C. 2803, 2809; 41 FR 4251.

Done in Washington, DC, this 25th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-25631 Filed 10-29-90; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Grain Inspection Service (FGIS) published a notice of proposed rulemaking in the **Federal Register** on Monday, October 1, 1990, (55 FR 43136), outlining its intention to increase fees for official inspection and official weighing services, as performed in the United States under the United States Grain Standards Act (USGSA), as amended, by 13.5 percent. The notice provided an opportunity for interested persons to forward written comments to FGIS until October 31, 1990, concerning any changes and/or revisions to the proposed fee increase. As a result of requests from the grain industry, FGIS is extending the comment period to provide interested persons with additional time in which to comment.

DATES: Comments must be submitted on or before November 30, 1990.

ADDRESSES: Written comments must be submitted to Paul D. Marsden, Federal Grain Inspection Service, USDA, room 0628-S, Box 96454, Washington, DC 20090-6454. Telemail users may respond to [IRSTASFF/FGIS/USDA] telemail; telex users may respond to Paul D. Marsden, TLX: 7607351, ANS: FGIS UC; and telecopier users may send responses to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul D. Marsden, address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: FGIS published a notice of proposed rulemaking in the **Federal Register** on October 1, 1990, (55 FR 40136) with the intent to obtain public comment on a proposal to increase fees or official inspection and official weighing services (7 CFR 800.71). The proposed increase is intended to cover, as nearly as practicable, the FGIS operating costs, including related supervisory and administrative costs. The comment period of 30 days from the date of publication was to close on October 31, 1990.

As a result of requests from the grain industry to allow time for additional comments, the comment period is hereby extended until November 30, 1990.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 24, 1990

D. R. Galliart,

Acting Administrator.

[FR Doc. 90-25581 Filed 10-29-90; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 1005

[Docket No. A0-388-A4, DA-90-032]

Milk in the Carolina Marketing Area; Notice of Hearing on Proposed Amendment to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a proposal by a cooperative association and a dairy processor to amend the Carolina Federal milk marketing order. The proposal would revise the pool distributing plant qualifications to permit unit pooling of two or more plants. Proponents contend that the proposed change is needed to maintain orderly marketing conditions.

DATES: The hearing will convene at 1 p.m. on November 8, 1990.

ADDRESSES: The hearing will be held at Ramada Inn, 515 Clanton Rd., Charlotte, North Carolina 28217 (704) 527-3000.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P. O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at Ramada Inn, 515 Clanton Rd., Charlotte, North Carolina 28217, beginning at 1 p.m., on November 8, 1990, with respect to a proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Carolina marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to proposal No. 1.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

PART 1005—[AMENDED]

The authority citation for 7 CFR part 1005 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Southern Milk Sales, Inc., and Hunter Jersey Farms, Inc.

Proposal No. 1

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered before the first day of the month in which the plants are to be considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Arnold Stallings, USDA/AMS/Dairy Division, P. O. Box 18030, Louisville, Kentucky 40218-0030, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition

applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Carolina Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on October 24, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-25580 Filed 10-29-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AGL-18]

Proposed Alteration to Transition Area; Staples, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the existing Staples, MN, transition area to accommodate a revised NAB Runway 14 Standard Instrument Approach Procedure (SIAP) to Staples Municipal Airport, Staples, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

DATES: Comment must be received on or before December 4, 1990.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 90-AGL-18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Planes, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate to this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AGL-18". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the designated transition area airspace near Staples, MN. The present transition area would be modified to accommodate a revised NDB Runway 14 SIAP to Staples Municipal Airport, Staples, MN. The modification to the existing airspace would consist of a 3-mile width each side of the 317° bearing from Staples Municipal Airport, extending from the existing 5-mile radius area to 8.5 miles northwest of the airport.

The revised procedure requires that the FAA alter the designated airspace to insure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Staples, MN [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Staples Municipal Airport (lat. 46°22'48" N., long. 94°48'08" W.); and within 3 miles each side of the 317° bearing from Staples Municipal Airport extending from the 5-mile radius to 8.5 miles northwest of the airport.

Issued in Des Plaines, Illinois, on October 15, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-25587 Filed 10-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90-ASO-17]

Proposed Alteration of Jet Route; Charleston, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-121 located in the vicinity of Charleston, SC. Under the current route alignment, a minimum en route altitude (MEA) signal gap exists in the route segment between Charleston, SC, and Norfolk, VA. This action would eliminate this gap by adding the Kinston, NC, VOR, to the description of J-121, thereby improving navigation in the area.

DATES: Comments must be received on or before December 10, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 90-ASO-17, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J-121 located in the vicinity of Charleston, SC, by adding the Kinston, NC, VOR, to the route alignment between Charleston and Norfolk, VA. Under the current alignment of this segment, an MEA signal gap exists. Adding Kinston, NC, VOR, to the route segment would eliminate this signal problem. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 71.100 is amended as follows:

§ J-121 [Amended]

By removing the words "Charleston, Norfolk, VA;" and substituting the words "Charleston, Kinston, NC; Norfolk, VA;"

Issued in Washington, DC, on October 19, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-25588 Filed 10-29-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 89P-0314]

Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of opportunity for hearing.

SUMMARY: The Food and Drug Administration (FDA), in response to an application from Vermont, is proposing that a Vermont statute concerning the sale of hearing aids be exempted from Federal preemption. The agency is also giving notice to interested persons of an opportunity to request an oral hearing on this proposal.

DATES: Written comments by December 31, 1990; requests for an oral hearing by November 29, 1990. FDA intends that if a final rule is issued based on this proposal, it shall be effective by November 29, 1990.

ADDRESSES: Written comments and requests for a hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 1989, Vermont applied for exemption from Federal preemption under section 521 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k) for 26 V.S.A. chapter 67, Section 3283a. This section states:

> To the extent permitted by Federal law, no hearing aid may be sold to a person who does not own a hearing aid at the time of sale without a written statement signed by a licensed physician that states that the patent's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

II. FDA Regulation

The FDA regulation (21 CFR 801.421) prohibits a hearing aid dispenser from selling a hearing aid unless the prospective user has presented to the dispenser a statement signed by a licensed physician stating that the patient's hearing loss has been evaluated medically, and that the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the 6 months preceding the sale. An informed adult, 18 years of age or older, may waive the medical evaluation requirement by signing a written statement. The hearing aid dispenser is prohibited from activity encouraging the prospective user to waive the medical evaluation.

III. Section 521 of the Act

Section 521(a) of the act provides that no State or local government may establish or continue in effect any requirement with respect to the safety and effectiveness of a device or any other requirement applicable to the device under the act if such requirement is different from, or in addition to, a requirement which is applicable to the device under the act. Section 521(b) of the act provides that the Commissioner of Food and Drugs may, upon application of a State or local government, exempt a requirement from preemption, if the State or local requirement for the device is more stringent than the requirement under the act, or if the requirement is necessitated by compelling local conditions and compliance with it would not cause the device to be in violation of a requirement under the act

Under section 521(a) of the act, Vermont section 3283a is preempted because it is different from the FDA regulation in that it does not permit a waiver of the medical evaluation requirement for a first-time purchaser. Under section 521(b) of that act, the Vermont provision is eligible for exemption because it is more stringent than the FDA regulation.

IV. Vermont Application

Vermont is requesting exemption for section 3283a, because it believes that it is more stringent than the Federal requirements in that it has a more limited waiver provision and that it is required by compelling local conditions because FDA's waiver provision is widely abused in Vermont and its section 3283a would not cause hearing aids to be in violation of the Federal act.

The Vermont application is supported by data compiled by Vermont's Office of the Attorney General, which inspected the records of 10 Vermont hearing aid dispensers for sales records for the period of January 1986 to June 1988. These dispensers sold approximately 2,601 hearing aids during this period. (Some sales figures were estimated.)

The investigators inspected the records of 858 of these sales (33 percent). Of these 858 sales, 63 (7 percent) had physicians' statements, 647 (75 percent) had waiver statements, and 132 (15 percent) had neither. (FDA requires that these records be maintained for 3 years after the sale.) Vermont believes that these figures show that Vermont hearing aid dispensers are violating the spirit of the FDA regulations in that FDA states that it is not in the best interest of the purchaser to exercise the waiver.

V. FDA's Evaluation

In two separate documents published in the **Federal Register** of October 10, 1980 (45 FR 67325 and 67326), FDA issued a final rule responding to 21 applications for exemption from preemption for hearing aid requirements. At that time, FDA denied exemption from preemption for several State requirements similar to that for which Vermont now seeks exemption. FDA denied these applications, saying that, while it believed that a medical evaluation should be obtained, it also believed that an informed adult should be permitted to waive the medical evaluation requirement for religious and personal reasons. At that time, however, experience with the FDA regulation was somewhat limited and no State submitted information similar to that which Vermont has submitted. FDA now believes that Vermont has submitted sufficient information to grant an exemption.

States whose applications for exemption for similar requirements were denied in the past may apply again, if they can present documentation similar to that submitted by Vermont.

VI. Effect of Exemption

FDA emphasizes that, when it grants an exemption to a State or local requirement, the granting of the exemption does not in any manner affect FDA requirements under the act. FDA requirements continue in full force and effect regardless of whether comparable or related State or local requirements are preempted or exempted from preemption. For example, the Vermont statute applies only when a person does not own a

hearing aid at the time of sale: The FDA regulation will continue to apply whether or not the purchaser owns a hearing aid at the time of sale.

VII. Oral Hearing

Interested persons may on or before November 29, 1990, submit requests for an oral hearing to the Dockets Management Branch (address above). Two copies of any request should be submitted except that individuals may submit one copy. Requests should be identified with the docket number found in brackets in the heading of this document.

If the agency determines that an oral hearing should be held, it will announce the time, date, and place of the hearing in a **Federal Register** notice. The procedures that will govern any such hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under part 15 (21 CFR part 15).

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Economic Impact

FDA has carefully analyzed the economic effects of this proposed rule and has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this proposed rule has been carefully analyzed, and it has been determined that the proposed rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Hearing aid dispensers are already required under the FDA rule to keep either a physician's statement or a waiver. Under the Vermont statute, they would be permitted to keep only a physician's statement in some cases. Therefore, no additional economic burden is being imposed on the dispensers. Using Vermont's figures, it is estimated that there are approximately 1,300 hearing aids sold in Vermont in a year. If each sale required a physician's evaluation and an evaluation cost $100, the total yearly cost would be $130,000. However, every sale does not require the physician's evaluation, as some sales are to persons who already own a hearing aid. There is no breakdown as to how many sales would require the evaluation. Furthermore, there is an apparent cost savings attendant to a physician's evaluation in that many people cannot benefit from using a hearing aid and a physician is best positioned to make this determination. A hearing aid can cost in excess of $400 and so the savings can be substantial. FDA invites further information on the costs that would be imposed by this proposal.

Interested persons may, on or before December 31, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: Secs. 521, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k, 371).

2. Section 808.95 is added to Subpart C to read as follows:

§ 808.95 Vermont.

The following Vermont medical device requirement is enforceable notwithstanding section 521(a) of the act because the Food and Drug Administratiion has exempted it from preemption under section 521(b) of the act: 26 V.S.A., chapter 67, section 3283a, on the condition that it is enforced in addition to the applicable requirements of this chapter.

Dated: October 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-25603 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760-B]

RIN 1218-AB27

Accreditation of Training Programs for Hazardous Waste Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; cancellation and rescheduling of informal public hearing.

SUMMARY: On July 27, 1990, the Occupational Safety and Health Administration (OSHA) published a document in the **Federal Register** (55 FR 30720) scheduling informal public hearings to begin on October 2, 1990, and reopening the written comment period for its proposed rule on Accreditation of Training Programs for Hazardous Waste Operations published in the **Federal Register** January 26, 1990 (55 FR 2776). On September 14, 1990, OSHA published another notice in the **Federal Register** (55 FR 37902) that reopened the comment period, cancelled the October hearings and rescheduled the hearings to begin on February 5, 1991. It has become necessary for OSHA to change the week of hearings scheduled for February 5–8, 1991 to now take place January 29–February 1, 1991 in Washington, DC. The hearing scheduled for February 12–14, 1991 in Cincinnati, OH will be held as previously scheduled. The dates for submission of comments, notices of intention to appear and testimony remain unchanged.

DATES: 1. The informal public hearing for OSHA's Accreditation of Training Programs for Hazardous Waste Operations rulemaking scheduled for February 5, 1991 through February 8, 1991 in Washington, DC is cancelled and rescheduled to begin at 9:30 a.m. January 29, 1991 through February 1, 1991 in Washington, DC.

The hearing announced on September 14, 1990 (55 FR 37902) scheduled for February 12, 1991 through February 14, 1991 in Cincinnati, OH will be held as planned starting at 9:30 a.m.

2. Notices of intention to appear must be postmarked by December 17, 1990. Written comments, testimony and all other evidence which will be offered into the hearing record must be postmarked by January 21, 1991.

ADDRESSES: 1. Four copies of the notice of intention to appear, testimony, and documentary evidence which will be introduced into the hearing record must

be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3649, U.S. Department of Labor, Washington, DC 20210. Previously submitted comments submitted in response to OSHA's January 26, 1990, or July 27, 1990, notices; or notices of intention to appear, testimony, and evidence submitted in response to OSHA's July 27, 1990, or September 14, 1990, notices need not be resubmitted and will be considered and used in scheduling the January hearing in Washington. Those parties who have previously filed notices of intention to appear at the previously scheduled hearings need only let OSHA know if they still intend to appear and their preferred dates to appear at the new hearing. They do not need to resubmit all of their supporting data unless it has changed.

2. The location of the rescheduled hearing will remain the Frances Perkins Building Auditorium, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. The location of the informal public hearing to be held in Cincinnati, OH will remain the Omni Netherland Plaza, 35 W. Fifth Street, Cincinnati, OH 45202 (513) 421–9100.

3. Written comments on the proposed standard should be submitted in quadruplicate to the Docket Office, Docket No. S–760–B, OSHA room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3649, U.S. Department of Labor, Washington, DC 20210. (202) 523–8615.

SUPPLEMENTARY INFORMATION: On October 10, 1990 OSHA received a formal request from the representative of some of the unions interested in participating in the training accreditation hearings to reschedule the hearings announced on September 14, 1990 (55 FR 37902). OSHA was requested to reschedule the hearings for another date anytime before February 1, 1991 or immediately after February 21, 1991. The reason for the request was that the experts and officials of the unions who were knowledgeable in this area had made previous commitments for the time period during which OSHA had rescheduled its hearings and it would be very difficult for them to participate in the proceeding.

OSHA considers the testimony to be offered by these individuals to be significant and necessary for the development of the final rule on training accreditation. In order to accommodate these individuals, OSHA has cancelled the hearing scheduled to begin on February 5, 1991 in Washington and has rescheduled that hearing to begin on January 29, 1991 in Washington. The hearing presently scheduled to begin on February 12, 1991 in Cincinnati, OH will remain as scheduled in the September 14, 1990 notice and reiterated herein.

OSHA recognizes the need to allow all individuals the necessary time and opportunity to present their testimony particularly when the individuals can be significantly impacted by a rulemaking. Since these hearings have previously been rescheduled with some inconvenience to many interested parties, OSHA is limiting its second rescheduling of the hearings to the Washington hearing. OSHA believes that there will be sufficient time and opportunity at the Washington hearing for the presentations of the individuals requesting a second rescheduling.

Public Participation

Comments

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be postmarked by January 21, 1991, and submitted in quadruplicate to the Docket Officer, Docket No. S–760–B, room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 523–5046 or (for FTS) 8–523–5046, provided the original and 3 copies are sent to the Docket Officer thereafter. There is no need to resubmit comments already submitted.

Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Oral Testimony

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard including economic and environmental impacts, will be provided at two informal public hearings scheduled to begin at 9:30 a.m. on dates as follows: January 29, 1991, in Washington, DC and on February 12, 1991, in Cincinnati, OH. The hearing in Washington will be held in the Auditorium, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. The hearing in Cincinnati, OH will be held at Omni Netherland Plaza, 35 W. Fifth Street, Cincinnati, OH 45202, (513) 421–9100.

Notice of Intention To Appear

All persons desiring to participate at the hearing must file in quadruplicate a Notice of Intention to Appear, postmarked on or before December 17, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. S–760–B, room N–3649, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210; telephone 202–523–8615. A Notice of Intention to Appear also may be transmitted by facsimile to 202–523–5986 or to 8–523–5986 (for FTS), provided the original and 3 copies of the Notice are sent to the above address thereafter.

The Notices of Intention to Appear, which will be available for inspection and copying at the OSHA Technical Data Center, Docket Office (room N–2625), telephone 202–523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed;

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

(7) At which hearing the party wishes to testify.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearings, or who will submit documentary evidence, must provide in quadruplicate the complete text of his or her testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked on or before January 21, 1991. The material will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be

allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time. Any pary who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceedings.

Persons who have already submitted notices of intention to appear, or testimony and evidence need not resubmit it. However, they need to notify Mr. Tom Hall of OSHA at the address given above of the dates that they wish to testify. Persons wishing to participate in the hearings on this rulemaking should see OSHA's procedures for the conduct of public hearings published in the **Federal Register** on July 27, 1990 (55 FR 30720).

Authority

Authority: Sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970, Pub. L. 91–596, 84 stat. 1593, 1599, 1600; (29 U.S.C. 653, 655, 657), 29 CFR part 1911 and Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of October 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90–25577 Filed 10–29–90; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to title 40, chapter 10 of the Utah Coal Annotated (U.C.A. 1953), otherwise known as the Utah Coal Mining and Reclamation Act. The amendment pertains to rulemaking authority and procedures, deadline for review and proposal of revision of rules, and deadline for revision of rules. In the amendment, Utah re-proposes State-initiated provisions that it previously withdrew from another amendment.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. November 29, 1990. If requested, a public hearing on the proposed amendment will be held on November 26, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on November 14, 1990.

ADDRESSES: Written comments should be mailed or hand-delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, on telephone number (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated October 10, 1990 (administrative record No. UT–589), Utah submitted a proposed amendment to its program pursuant to SMCRA. In the amendment, Utah re-proposes State-initiated provisions that it previously withdrew (administrative record No. UT–568) from another amendment (administrative record No. UT–540). Specifically, Utah proposes to add provisions to the Utah Coal Mining and Reclamation Act at U.C.A. 40–10–6.5 (rulemaking authority and procedures) and U.C.A. 40–10–6.6 (1) and (2) (deadline for review and proposal of revision of rules, and deadline for revision of rules).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. on November 14, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 1990.

Raymond L. Lowrie,

Assistant Director Western Support Center.

[FR Doc. 90–25598 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

RIN 1024–AB76

Sequoia and Kings Canyon National Parks; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would simplify existing fishing regulations in Sequoia and Kings Canyon National Parks. The rule changes would terminate closures on 42 miles of streams and provide for fishing in almost all streams and lakes throughout these parks. The parks' research and monitoring programs have identified a need to restore the natural distribution and abundance of native species, and to help retard expansion of introduced species.

The proposed changes to the regulations address these concerns and will provide, on an annual basis, for adjustments based upon additional research and monitoring. With the proposed changes, the Superintendent will be able to annually incorporate season opening and closing dates and other provisions issued by the State of California as well as to make other necessary modifications with respect to fishing restrictions. Such changes will be annually documented in the compendium of Superintendent's Orders and made available to the public.

The effects of these rules on the public would be minimal. Anglers would have to be able to identify fish to make appropriate keep or release decisions. They would also be expected to make reasonably accurate decisions with respect to elevation in back country areas.

DATES: Written comments will be accepted through November 29, 1990.

ADDRESSES: Comments should be addressed to: Superintendent Sequoia and Kings Canyon National Parks, Three Rivers, California 93271.

FOR FURTHER INFORMATION CONTACT: Harold Werner, Fish and Wildlife Biologist, Sequoia and Kings Canyon National Parks, Three Rivers, California 93271, Telephone: (209) 565–3341, Extension 221.

SUPPLEMENTARY INFORMATION:

Background

Recreational fishing is a valid visitor activity in Sequoia and Kings Canyon National Parks. It is recognized as such by National Park Service policy and mandated by statute at 16 U.S.C. 45b enacted in 1926. The present special fishing regulations for these parks are codified in 36 CFR 7.8(b). They serve the exclusive purpose of identifying approximately 45 miles of streams that are closed to fishing. the proposed rulemaking would open 42 miles of streams currently closed to fishing. Less than three miles of stream in the Soda Springs drainage would remain closed to protect a threatened species, the Little Kern golden trout.

The pristine distribution of trout in Sequoia and Kings Canyon National Parks has been obscured by a long history of fish introduction that began in the 1850's and became widespread by the 1870's. Available information indicates that the parks' high elevation lakes and streams were barren of fish, although in some areas native trout did range upwards to 9,000 feet. Rainbow trout were native to the streams on the west side of these parks, and golden trout were found at the south side of Sequoia National Park.

As a result of fish introduction rainbow and golden trout became established parkwide. In addition the eastern brook trout and brown trout, which were also introduced, soon became established throughout park streams. Brook trout dominate many of the parks' high lakes and brown trout are widespread in rivers and streams below 10,000 feet.

Monitoring of fish populations in the Kaweah River drainage from 1980 through 1985 showed a significant displacement of native trout by introduced brown trout as a proportion of the fish population. During that five-year period, brown trout increased from five percent to 12 percent of the surveyed population. The impact was greatest at low elevations, particularly where roadways make rivers easily accessible. Rainbow trout were impacted least in areas closed to fishing. It is believed this resulted because rainbow trout are easier to catch and thus harvested disproportionately more than brown trout, and because of predation on rainbow trout by large brown trout.

The objectives of the fishery management program in Sequoia and Kings Canyon National Parks.

(a) Protect and restore native fish populations, and meet the requirements of the Endangered Species Act.

(b) Permit and maintain quality fishing opportunities consistent with National Park Service policies and specific statutory mandates contained in the early legislation of Sequoia National Park.

Attainment of these objectives requires that angler harvests help restore a survival advantage to rainbow and golden trout within their pristine range and retard or eliminate continued expansion of introduced brown trout. Regulations to serve this objective, and to assure a high quality angling experience, include:

(1)Restrictions on the species and numbers of fish taken;

(2) Bait and terminal gear regulation; and

(3) Differing restrictions at various sites and elevations based upon native fish distribution patterns and human developments.

Ongoing monitoring and research will continue to measure the effectiveness of these regulations in terms of meeting fisheries management objectives. When a change is required the Superintendent will be able to respond quickly to protect this resource and meet recreational goals. In the absence of this proposed regulation approximately eight months will elapse before even minor changes can be made in special regulations contained in 36 CFR 7.8(b).

This process involves extensive review at various levels in the National Park Service and the Department of the Interior, and also includes a period set aside for public review and comment.

The proposed fishing regulation provides the Superintendent the ability to make routine changes in the regulations locally and in a timely manner, using discretionary authority documented in the general regulations of the National Park Service at 36 CFR 1.5.

This proposal would afford greater protection to the parks' fishery resources, provide for quicker and more effective response to visitor needs and public input and provide the Superintendent with greater flexibility to respond to specific situations. Public notice of restrictions established by the Superintendent in accordance with this proposed regulation would be made through signs, maps, brochures, newspaper notices or other appropriate methods as required by 36 CFR 1.7. Detailed information pertaining to the nature and extent of fishing restrictions will be readily available to anglers in the parks. The fishing regulations will be reviewed at least annually and made a part of the Superintendent's annual compendium.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding these proposed rules to the address noted at the beginning of this rulemaking.

Drafting Information

The primary author of this regulation is Harold Werner, Fish and Wildlife Biologist, Sequoia and Kings Canyon National Parks.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and certified that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibiliity Act (5 U.S.C. 601 *et seq.*). The proposed rulemaking should have some minor effect on the types, but not quantity, of fishing supplies sold in the immediate area.

The National Park Service has reviewed this rule as directed under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," to determine if this rule has "policies that have taking implications." The Service has determined that the proposed rule does not have taking implications since it regulates activities on federal land.

In accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, an environmental assessment for fisheries management alternatives was prepared and placed on public review from March 12, 1987, until June 30, 1987. Of the 54 responses, 70 percent supported the preferred alternative and an additional 15 percent supported the preferred alternative with minor modifications. Responses indicated strong group interest on the part of flyfishing organizations. The Finding of No Significant Impact was approved on December 14, 1987. The proposed rulemaking is intended to provide the Superintendent with the authority and flexibility necessary to implement the various elements of the selected action.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements. In consideration of the foregoing, it is proposed to amend 36 CFR chapter 1 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Section 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising § 7.8 paragraph (b) to read as follows:

§ 7.8 Sequoia and Kings Canyon National Parks.

* * * * *

(b) *Fishing.* (1) Fishing regulations, based on management objectives described in the Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on any activity petaining to fishing including, but not limited to, species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, size, location and elevation, and possession limits.

(3) Fishing in violation of a condition or restriction established by the Superintendent is prohibited.

(4) Soda Springs Creek drainage is closed to fishing.

* * * * *

Dated July 20, 1990.

Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90–25658 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

RIN 2900–AD74

Authority of Fiduciaries To Conduct Insurance Transactions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations; correction.

SUMMARY: On Pages 33140–33141 of the **Federal Register** of August 14, 1990 (55 FR 33140), the Department of Veterans Affairs published a proposed rule to amend its regulations to clarify and enunciate the right and authority of fiduciaries to conduct insurance transactions on behalf of government life insurance policyholders and beneficiaries. In § 8.119, paragraph (b) of the proposed rule (page 33141), three words were inadvertently omitted (i.e., it should have also stated that a guardian of an insured or beneficiary shall have the authority to *apply for insurance*). To avoid any confusion, VA is published the correct paragraph (b).

VA regrets the error which is corrected by this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, (215) 951–5360.

Dated October 23, 1990.

Charles A. Fountaine, III,

Records Management Service.

38 CFR part 8, National Service Life Insurance, proposed § 8.119, paragraph (b) is corrected and its authority citation is republished to read as follows:

§ 8.119 Guardian: definition and authority.

* * * * *

(b) *Authority.* For the purpose of this part, a guardian of an insured or beneficiary shall have authority to: Apply for insurance; apply for conversion of a policy or change of plan; reinstate a policy; withdraw dividends

held on deposit or credit; select or change a dividend option; obtain a policy loan; cash surrender a policy; authorize a deduction from benefits or allotment from military retired pay to pay premiums; apply for and receive payment of the proceeds on a matured policy; select or change the premium payment option; apply for waiver of premiums and total disability income benefits; select or change settlement options for beneficiaries; assign a beneficiary's interest as provided under section 718 of title 83, United States Code.

(Authority: 38 U.S.C. 706)

[FR Doc. 90-25533 Filed 10-29-90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-460; RM-7377]

Radio Broadcasting Services; Van Buren, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of LKR Communications, Inc., licensee of Station KLSZ-FM, Van Buren, Arkansas, seeking the substitution of FM Channel 274C2 for Channel 272A and modification of its license accordingly. The proposal is conditioned upon the issuance of a license to cover the construction permit issued to Station KHOZ-FM, Harrison, Arkansas. Coordinates used for Channel 274C2 at Van Buren are 35-17-55 and 94-25-26.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo and Robert D. Primosch, Esqs., Fletcher, Heald & Hildreth, 1225 Connecticut Ave., NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-460, adopted September 28, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25557 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-463, RM-7371]

Radio Broadcasting Services; Coleraine, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lew Latto requesting the allotment of Channel 241C1 to Coleraine, Minnesota, as that community's first FM broadcast service. There is a site restriction 8.6 kilometers (5.3 miles) north of the community. Canadian concurrence will be requested at coordinates 47-21-24 and 93-25-47.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John J. McVeigh, Fisher, Wayland, Cooper and Leader, 1255 Twenty-third Street, NW., suite 800, Washington, DC 20037-1125.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-463, adopted September 27, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibilty Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 37

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25554 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-461; RM-7376]

Radio Broadcasting Services; Gardnerville-Minden, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Carson Valley Radio, Inc. seeking the substitution of Channel 256C3 for Channel 257A at Gardnerville-Minden, Nevada, and the modification of its license for Station KGVM to specify operation on the higher powered channel. Channel 256C3 can be allotted

to Gardnerville-Minden in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 38–56–24 and West Longitude 119–45–00. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 256C3 at Gardnerville-Minden or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carson Valley Radio, Inc., P.O. Box 2109, Minden, Nevada 89423 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–461, adopted September 28, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25556 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–462, RM–7467]

Radio Broadcasting Services; Banks, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Robert Anthony Fogal, d/b/a Common Ground Broadcasting, seeking the substitution of Channel 298C3 for Channel 298A at Banks, Oregon, and the modification of his construction permit for a new station on the Class A channel to specify the higher powered Channel 298C3. Channel 298C3 can be allotted to Banks in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in petitioner's outstanding construction permit. The coordinates for Channel 298C3 at Banks are North Latitude 45–39–57 and West Longitude 123–00–35. Canadian concurrence in the allotment is required since Banks is located within 320 kilometers (200 miles) of the U.S.-Canadian border. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 298C3 at Banks or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John H. Midlen, Jr., Esq., Gregory H. Guillot, Esq., Midlen & Guillot, Chartered, 3238 Prospect Street, NW., Washington, DC 20007 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–462, adopted September 28, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25555 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–464; RM–7470]

Radio Broadcasting Services; Clarendon, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by John W. Lyle seeking the allotment of Channel 295A to Clarendon, Pennsylvania, as the community's first local FM service. Channel 295A can be allotted to Clarendon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 41–46–48 and West Longitude 79–05–36. Canadian concurrence in the allotment is required since Clarendon is located within 320 kilometers (200 miles) of the U.S.-Canadian border .

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric S. Kravetz, Esq., Stephen E. Coran, Esq., Brown Finn & Nietert, Chartered, 1920 N Street, NW., suite 660, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–464, adopted September 28, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25552 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–465, RM–7278]

Radio Broadcasting Services; Chippewa Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jay Lellman proposing the allotment of Channel 260C3 to Chippewa Falls, Wisconsin, as that community's second FM broadcast service. The channel is site restricted 21 kilometers (13 miles) northwest of the community at coordinates 45–06–56 and 91–28–44.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Jay Lellman, 901½ Oxford Avenue, Eau Claire, Wisconsin 54702 (Petitioner).

Larry G. Fuss, Contemporary Communications, Post Office Box 159, Fayetteville, Georgia 30214 (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–465, adopted September 28, 1990, and released October 24, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25553 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–469, RM–7428]

Radio Broadcasting Services; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of New South Radio, Inc., licensee of Station WACT–FM, Channel 288A, Tuscaloosa, AL, seeking the substitution of FM Channel 288C3 for Channel 288A and modification of its license accordingly. Coordinates for this proposal are 33–20–00 and 87–25–39.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–469, adopted September 28, 1990, and released October 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25665 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-468, RM-7380]

Radio Broadcasting Services; Wickenburg and Lake Havasu City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Kenyon Communications, licensee of Station KTIM-FM, Wickenburg, Arizona, seeking the substitution of Channel 287C1 for Channel 287C2 and modification of its license accordingly. Additionally, Channel 283C2 is proposed as a substitute for Channel 286C2 at Lake Havasu City, Arizona, licensed to Station KZUL-FM. An *Order to Show Cause* is being issued to Mad Dog Wireless, Inc., licensee of Station KZUL-FM. Coordinates for Channel 287C1 at Wickenburg, Arizona, are 34-14-02 and 112-50-13, while those for Channel 283C2 at Lake Havasu City are 34-29-10 and 114-13-06.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Steven A. Lerman and Sally A. Buckman, Esqs., Leventhal, Senter & Lerman, 2000 K St., NW., suite 600, Washington, DC 20006-1809.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-468, adopted September 28, 1990, and released October 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25664 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-467, RM-7443]

Radio Broadcasting Services; Gualala, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Dr. Gerhard Hanneman, seeking the allotment of FM Channel 246B1 to Gualala, California, as that community's first local broadcast service. Coordinates for this proposal are 38-50-06 and 123-35-13.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David M. Silverman, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Ave., NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION; This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-467, adopted September 28, 1990, and released October 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, al *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Divison, Mass Media Bureau.

[FR Doc. 90-25663 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-470, RM-7374]

Radio Broadcasting Services; Laurel, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jubilee Radio Network of Montana proposing the allotment of Channel 269C to Laurel, Montana, as that community's first FM broadcast service. The coordinates for Channel 269C are 45-40-24 and 108-46-18.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: A. Wray Fitch III, Gammon & Grange, 1925 K Street, NW., suite 300, Washington, DC 20006 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.2

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–470, adopted September 28, 1990, and released October 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the mattter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25666 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–466, RM–7327]

Radio Broadcasting Services; Hondo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Medina, Inc., permittee of Station KRBH(FM), Channel 253A, Hondo, Texas, proposing the substitution of Channel 254C3 for Channel 253A at Hondo, and the modification of its construction permit for Station KRBH(FM) to specify operation on the higher powered channel. The proposed site for Channel 254C3 is 29–20–54 and 99–08–36.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: A. Wray Fitch III, Gammon & Grange, 1925 K Street, NW., suite 300, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–466, adopted September 28, 1990, and released October 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25662 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 80

[DA 90–1463]

Maritime Services; Use of Synthesized Voice for Emergency Distress Messages; Declaratory Ruling Request

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: Notice is given that Robert Tendler of Emergency Vessel Location System, has filed a *Request for Issuance of Declaratory Ruling* asking the Commission to interpret part 80 of the Commission's Rules, 47 CFR part 80, to allow a synthesized voice for emergency distress messages. The Commission seeks comment on this issue.

DATES: Comments must be received by December 31, 1990, and reply comments on or before January 15, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Federal Communications Bureau, Private Radio Bureau, 2025 M Street, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Authority: 47 CFR Part 80: Maritime service.

Emergency Vessel Location System Requests that a Synthesized Voice Used for Emergency Messages be Interpreted as Complying With Part 80 of the Commission Rules

October 24, 1990.

On September 28, 1990, Robert Tendler filed a *Request for Issuance of Declaratory Ruling* requesting that the Commission interpret part 80 of the Commission's Rules, 47 CFR part 80, to include a synthesized voice as appropriate for emergency voice messages. In his request, Mr. Tendler suggests that, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and relevant Circuit Court decisions, a declaratory ruling is appropriate when the Commission interprets an existing rule. Here, Mr. Tendler argues that because the Commission's Rules do not explicitly determine the acceptability of a synthesized voice, the matter is left to interpretation by the Commission. Thus, Mr. Tendler seeks a Commission declaratory ruling that interprets part 80 to allow for a synthesized voice for emergency messages.

The Private Radio Bureau seeks comment on this issue. To file comments, please file an original and two copies at the following address: Chief, Special Services Division, Federal Communications Commission, 2025 M Street, NW., room 5322, Washington, DC 20554. Comments should be filed by December 31, 1990. Reply Comments should be filed by January 15, 1991. Comments and reply comments should refer to: Emergency Vessel Location System Declaratory Ruling Request.

Copies of Emergency Vessel Location System's *Request for Issuance of*

Declaratory Ruling, as well as any documents filed in this matter, may be obtained from the Commission's copy contractor, International Transcription Services, Inc., at the following address and telephone number: ITS, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. These documents may also be inspected at room 5322, noted above.

For further information, please contact Susan Jones at (202) 632–7175.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–25559 Filed 10–29–90; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 55, No. 210
Tuesday, October 30, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-192]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release a genetically engineered organism into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release a genetically engineered organism into the environment:

Application No.	Applicant	Date received	Organism	Field test location
90-249-01	Calgene, Inc	09-06-90	Tomato plants genetically engineered to contain the antisense Polygalacturonase gene.	California

Done in Washington, DC, this 25th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-25632 Filed 10-29-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-213]

Scrapie Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA

ACTION: Notice of meeting

SUMMARY: The purpose of this notice is to announce the sixth meeting in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held on November 15 and 16, 1990, from 9 a.m. to 5 p.m. each day. The meeting will be held at the Embassy Square Suites, 2000 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8017.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on February 26, 1990 (55 FR 6662-6663, Docket No. 89-139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92-463). The Committee will develop alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first meeting of the Committee was held on May 8 and 9, 1990, with four subsequent meetings in July, August, September, and October, 1990. This notice announces the sixth meeting in a series of sessions of the Committee.

The purpose of the meeting is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agenda for the sixth meeting of the Committee is as follows:

First Day

Morning session—9 a.m.
- Review of minutes of last meeting
- Discussion of draft Scrapie Certification and Control Plan

Afternoon session—1 p.m.
- Discussion of draft Scrapie Certification and Control Plan
- Public Comments

Second Day

Morning session—9 a.m.
- Discussion of draft Scrapie Certification and Control Plan

Afternoon session—1 p.m.
- Committee Administration Issues
- Discussion of Future Committee Meeting Agendas
- Public Comments

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at the meeting for this

purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meeting, or after the meeting by sending the statement on or before November 30, 1990, to Helen Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to the Scrapie Negotiated Rulemaking Advisory Committee.

This notice of meeting is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92–463).

Done in Washington, DC, this 25th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–25633 Filed 10–29–90; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Kern River and/or WyCal Natural Gas Pipeline(s), Wasatch-Cache National Forest, Davis County, Utah, Fishlake National Forest, Millard County, Utah, Dixie National Forest, Washington County, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of records of decision.

SUMMARY: Pursuant to 40 CFR 1506.3 notice is given that the Forest Service has adopted the Final Environmental Impact Statement (FEIS) for the Mojave—Kern River—El Dorado Natural Gas Pipeline Projects and the Final Supplement to the FEIS for the Wyoming California Pipeline Project as they relate to National Forest lands in Utah.

DATES: Adoption of the FEIS was considered official when the Records of Decision were signed—October 9, 1990 for the Fishlake National Forest, October 10, 1990 for the Dixie National Forest, and October 17, 1990 for the Wasatch-Cache National Forest. Implementation of the project will be by December 14, 1990.

SUPPLEMENTARY INFORMATION: In May 1985, Kern River Gas Transmission Company (Kern River) filed an application with the Federal Energy Regulatory Commission (FERC) for a certificate to construct a 837 mile 36 inch diameter natural gas pipeline from Opal, Wyoming to Kern County, California. The FERC, as a joint lead agency with the California State Lands Commission and with the Forest Service and BLM as cooperating agencies, completed the Final Environmental Impact Statement (FEIS) in December 1987.

In August 1987 Wyoming-California Pipeline Company (WyCal) filed an application with the FERC for a certificate to construct a pipeline along the same route using the Wasatch Variation. A supplement to the FEIS analyzing alternatives to the Wasatch Variation was completed in October 1988.

The Environmental Impact Statement and Supplement have been completed and the Wasatch Variation selected as the most environmentally acceptable route of those analyzed. An administrative law judge issued a decision that the FEIS and Supplement were adequate and from an environmental standpoint a pipeline could be constructed in an acceptable manner if the required mitigation measures were followed. That decision has been accepted by FERC and the FEIS and Supplement have been upheld in the Washington, DC Circuit Court of Appeals.

The decisions documented are the decision of the Forest Supervisor of the Wasatch-Cache National Forest to amend the Forest Land and Resource Management Plan to allow the Kern River and/or WyCal natural gas pipeline(s) across the Wasatch Variation route, the decision of the Forest Supervisor of the Fishlake National Forest to allow the construction of the pipeline(s) through the Scipio Pass utility corridor established in the Fishlake National Forest Land and Resource Management Plan, and the decision of the Forest Supervisor of the Dixie National Forest to allow the construction of the pipeline(s) along the mainline route through the New Castle to Veyo utility corridor established in the Dixie National Forest Land and Resource Management Plan.

October 18, 1990.

Susan Giannettino,

Forest Supervisor.

[FR Doc. 90–25607 Filed 10–29–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Post Enumeration Survey—Interview Questionnaire—21st Decennial Census—1990.

Form Number(s): D–1300, D–1300.1, D–1300.2(L).

Agency Approval Number: 0607–0666.

Type of Request: Revision of a currently approved collection.

Burden: 40,850 hours.

Number of Respondents: 180,556.

Avg Hours Per Response: 14 minutes.

Needs and Uses: This revision will permit the use of the Post Enumeration Survey Interview Questionnaire in a special survey to evaluate the imputation methodology of approximately 1,100 unresolved match status cases from the 1990 Decennial Census Post Enumeration Survey.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 24, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–26555 Filed 10–29–90; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Short-Supply Determination; Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination: certain steel plate.

SHORT-SUPPLY REVIEW NUMBER: 23.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 38,238.2 net tons of certain steel plate for the fourth quarter of 1990 under Article 8 of the U.S.–E.C. steel arrangement.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Richard O. Weible,

Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: On September 13, 1990, Berg Steel Pipe Corporation ("Berg") submitted an adequate petition requesting a short-supply allowance for 38,238.2 net tons of steel plate, 130.297–130.966 inches in width and 0.417–0.630 inch in thickness that meets or exceeds API specification X–70, to be delivered during the fourth quarter of 1990. This steel plate will be used by Berg to manufacture certain 42-inch diameter pipe. The request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Berg's petition alleges that no mill in the United States is capable of meeting the required specifications for this plate and that the two qualified foreign mills for this material do not have sufficient available quota to supply this order. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Commerce's Short-Supply Regulations (19 CFR 357.102).

Action

On September 13, 1990, the Secretary established an official record on this short-supply request (Case Number 23) in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address. On September 18, 1990, the Secretary published a notice in the **Federal Register** announcing its review of this request and soliciting comments from interested parties. Comments were required to be received no later than September 25, 1990, and interested parties were invited to file replies to any comments not later than September 30, 1990. In order to determine whether this product could be supplied to Berg during the fourth quarter of 1990, the Secretary sent questionnaires to Bethlehem Steel Corporation ("Bethlehem"), Oregon Steel Corporation ("Oregon Steel"), and USX Corporation ("USX"), the three potential U.S. producers of this product. The Secretary received questionnaire responses from all three companies and no comments to the **Federal Register** notice.

Questionnaire Responses

Bethlehem, USX, and Oregon Steel indicated that they would not be viable suppliers of the subject plate during the fourth quarter of 1990. Bethlehem and USX both indicated that they could not produce the requested product and Oregon Steel noted because of other commitments, it could not meet Berg's needs during this period.

Conclusion

The three potential domestic suppliers of X–70 grade steel plate are either unwilling or unable to supply this material to Berg during the required time frame or cannot meet the necessary specifications. Furthermore, sufficient quota is unavailable to the foreign suppliers for this steel plate. Therefore, the Secretary determines that short-supply exists with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Regulations (19 CFR 357.102), the Secretary grants Berg a short-supply allowance for 38,238.2 net tons of the requested plate for the fourth quarter of 1990.

Dated: October 1, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–25654 Filed 10–29–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Mobil Exploration & Producing U.S. Inc.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal and Public Hearing and Request for Comments.

On July 31, 1990, Mobil Exploration & Producing U.S. Inc. (Mobil or Appellant) filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of North Carolina (State) to the Appellant's consistency certification for a National Pollution Discharge Elimination System (NPDES) permit for the Manteo Block 467 exploratory drilling project off the coast of North Carolina.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed.

A public hearing has been scheduled to address the findings the Secretary must make for each appeal as set forth in the regulations at 15 CFR 930.121 and 930.122. The public hearing will be held on Thursday, December 13, 1990, from 4:30 p.m. until 10 p.m., at Manteo High School, 616 Wigina Avenue, Manteo, North Carolina. Persons interested in speaking at the hearing regarding any of the above criteria are required to register on the day of the hearing at the high school. Registration of speakers will begin at 3:30 p.m. Oral comments from public interest/lobbyist groups will be recognized on a first-come-first-serve basis and will be limited to five minutes. Oral comments from the general public will be recognized on a first-come-first-serve basis and will be limited to three minutes. Written comments will be accepted at the public hearing.

In addition, written comments on the findings the Secretary must make for each appeal may be sent to Ms. Margo E. Jackson, Assistant General Counsel

for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235. Comments are due by December 27, 1990. Copies of comments should also be sent to Ms. Robin W. Smith, Assistant Attorney General, State of North Carolina, P.O. Box 629, Raleigh, North Carolina 27602–0629.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: October 24, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90–25610 Filed 10–29–90; 8:45 am]

BILLING CODE 3510–08–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Scientific and Statistical Committee (SSC) on November 7–8, 1990, at the Omni Tampa Hotel at Westshore, 700 North Westshore Boulevard, Tampa, FL. The SSC will review Amendment #3 to the Reef Fish Fishery Management Plan (FMP), which would extend the recovery period for red snapper stocks. The SSC also will discuss Amendment #5 to the Shrimp FMP; Amendment #4 to the Stone Crab FMP; Amendment #5 to the Spiny Lobster FMP, and Amendment #1 to the Billfish FMP, which provides an overfishing definition.

On November 7 the SSC will begin its meeting at 1 p.m., to discuss the reef fish fishery and recess at 5 p.m. On November 8 the SSC will reconvene at 8 a.m. to discuss the shrimp, stone crab, and spiny lobster fisheries. The SSC will begin discussion of the billfish fishery at 1 p.m. and adjourn at 2 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: October 24, 1990

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 90–25582 Filed 10–29–90; 8:45 am]

BILLING CODE 3510–10–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) ad hoc technical review committee will hold a public meeting on November 5–6, 1990, at the Council's Office, Metro Center, Suite 320, 2000 S.W. First Avenue, Portland, OR, to review the limited entry amendment #6 to the Council's Groundfish Fishery Management Plan. On November 5 the committee will begin the meeting at 1 p.m. to conduct a technical review of a draft of the Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for the limited entry amendment. The Committee will adjourn the meeting at 4 p.m. on November 6.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: October 24, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–25583 Filed 10–29–90; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagics Plan Monitoring Team will hold public meetings on October 30–31, 1990, at the Honolulu Laboratory, Conference Room, 2570 Dole Street, Honolulu, HI. The meeting will begin at 9 a.m., on October 30.

The Council will, at this meeting: (1) Review the need to limit fishing effort in the Hawaii longline fishery, (2) develop alternative means of limiting fishing effort in light of the needs identified above; (3) discuss alternative means for resolving conflicts between longliners and trollers and handliners; (4) consider the draft overfishing definition amendment; (5) determine data needs for monitoring the preformance of fisheries for pelagic species; (6) and conduct other business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: October 26, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–25816 Filed 10–29–90; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on November 29–30, 1990. The meeting will be held at the Pentagon, Washington, DC and the Naval Submarine Base, Kings Bay Georgia. The meeting will commence at 8:15 a.m. and terminate at 5 p.m. on November 29 and 30, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and demonstrations for the committee members on undersea warfare missions and operations. The agenda will include briefings, demonstrations and discussions related to strategic command, control and communications, The Trident II (D–5) missile, and SSBN security and intelligence. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander John Hrenko, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Dated: October 17, 1990.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Navy Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 90–25608 Filed 10–29–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 29, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Office, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, pubishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the request are available from James O'Donnell at the address specified above.

Dated: October 23, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New
Title: Beginning Postsecondary Students Longitudinal Study 1990–1992
Frequency: Biennially
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 4304
Burden Hours: 1829
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this study is to collect information about first-year postsecondary students. This information will be used to report statistical analysis on the conditions of education in the United States.

[FR Doc. 90–25567 Filed 10–29–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Award of a Cooperative Agreement, Noncompetitive Financial Assistance; University of Nevada-Reno

AGENCY: U.S. Department of Energy (DOE), Yucca Mountain Project Office (Project Office).

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE, Project Office announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the University of Nevada-Reno (UNR) to facilitate participation in the Yucca Mountain repository program.

The Nuclear Waste Policy Act of 1982 (NWPA) implemented a federal policy decision to concentrate DOE disposal and research efforts in the development of a mind geologic repository. The Nuclear Waste Policy Amendment Act of 1987 restrict DOE efforts in site characterization to the Yucca Mountain site in Nevada.

UNR has been involved since the onset of the repository related work being conducted. The role of UNR has included work in geology and seismology as well as other areas of concern. UNR's position in the Nevada academic community creates an environment in which dedicated participation in the current nuclear waste repository process is a logical and necessary accompaniment to the DOE effort.

PROJECT SCOPE: It will be the responsibility of the recipient to establish a program to educate students of all ages to be more scientifically literate in order to make rational decisions about energy and mineral resource development, environmental pollution, nuclear and alternate power sources needed in the 21st Century. Contact between Project Office participants and UNR faculty and staff is anticipated to be extensive. Activities undertaken by the recipient over the five year life of the agreement will reflect a changing emphasis on particular aspects of the project as progress continues toward a fully operational nuclear waste disposal facility. Areas chosen for academic pursuit include areas in which DOE has a vital interest and can provide extensive technical assistance as provided for under the NWPA.

The project period for the cooperative agreement is a five year period expected to begin November 30, 1990. The total estimated cost of this award is $1,250,000 over the total project period.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Yucca Mountain Project Office, Attn: Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, NV 89193-8608.

Issued in Las Vegas, Nevada, on October 19, 1990.

Nick C. Aquilina,

Manager Nevada Operation Office.

[FR Doc. 90-25651 Filed 10-29-90; 8:45 am]

BILLING CODE 6450-01-M

Secretary of Energy Advisory Board, Task Force on the Department of Energy National Laboratories; Open and Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee task force meetings:

Name: Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories.

Dates and times: Monday, November 12, 1990, 8:30 am–5:00 pm—Closed; Tuesday, November 13, 1990, 8:30 am–4:00 pm—Open.

Place: Tuesday, November 13, 1990—Open. Scripps Institution of Oceanography, Martin Johnson House (T–29), University of California at San Diego, 8602 La Jolla Shores Drive, La Jolla, CA 92093, Telephone: (619) 534–2826

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–7092.

Purpose: The Task Force will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy's (DOE) National Laboratories and the Department's management of those laboratories.

Tentative Agenda

Monday, November 12, 1990

8:30 am Closed Meeting

Tuesday, November 13, 1990

8:30 am Presentations by National Laboratory Directors
12:00 Noon Lunch Break
1:00 pm Presentations by National Laboratory Directors (continued)
3:45 pm Public Comment Period
4:00 pm Adjournment

Public participation: The meeting on November 13, 1990, is open to the public from 8:30 am to 4:00 pm. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Persons wishing to attend the meeting on November 13, 1990, should contact Patti Parsons, Office of the Director, Scripps Institution of Oceanography, (619) 534–2826, to arrange for permission to park.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 5 p.m. (e.s.t.) Wednesday, November 7, 1990, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (e.s.t.) Wednesday, November 7, 1990, to assure it is considered by Task Force members during the meeting.

Closed meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1982)), part of this advisory committee meeting concerns matters listed in 5 U.S.C. 522b(c) (1) and (3) and, accordingly, on November 12, 1990, the meeting will be closed to the public.

Minutes: A transcript of the November 13, 1990 public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 am and 4:00 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: October 25, 1990.

J. Robert Franklin,

Deputy Advisory Committee Mangement Officer.

[FR Doc. 90–25652 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–81–NG]

Access Energy Corp.; Application for Blanket Authorization to Import Natural Gas from Canada and Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 19, 1990, of an application by Access Energy Corporation (Access) for blanket authority to import up to 296 Bcf of natural gas, including liquefied natural gas (LNG), from Canada and Mexico and other countries, over a two-year term from the date of first delivery. If granted, this authorization would supersede Access' existing short-term blanket import authority under DOE/ERA Opinion and Order No. 294 (Order 294), issued January 11, 1989. All transactions contemplated under the new Access import proposal would utilize existing facilities and would be subject to FE's reporting requirements.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4708.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Access, a Delaware corporation with its principal place of business in Dublin, Ohio, is engaged in the marketing of natural gas throughout the U.S. and Canada. Access asserts that the blanket authorization requested to import competitively priced natural gas will enable it to make alternative supplies of gas available to a wide range of markets in the United States, including pipelines, local distribution companies and commercial and industrial end-users. Approval of the application also will avoid interruption of existing import arrangements if they extend beyond the December 31, 1990, expiration date of Access' current authorization to import natural gas.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing facilities are located.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

A decision on Access' request for expedited treatment will not be made until all responses to this notice have been received and evaluated. The decision on application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas import applications, issues determined to be appropriate in a particular case are considered, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that this import arrangement will be competitive and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' witten comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Access' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 24, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–25653 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–60–NG]

Czar Gas Corporation, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Czar Gas Corporation, Inc. (Czar Inc.) blanket authorization to import up to 146 Bcf of Canadian natural gas and export to Canada up to 146 Bcf of natural gas over a two-year term beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 24, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–25647 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. 90–51–NG]

ICG Utilities (Ontario) Ltd.; Amendment of Authorization To Import Natural Gas from and Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order amending authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order amending ICG Utilities (Ontario) Ltd's existing import and export authorization to increase the volumes which ICG is authorized to import from Canada and subsequently export back to Canada from up to 8,267 MMcf per year to up to 10,220 MMcf per year over a term beginning on November 1, 1990, and ending on October 31, 2005. ICG's import/export arrangement provides a means by which ICG transports gas from western Canada across the State of Minnesota to eastern Canada to use as system supply and to fuel a proposed new cogeneration facility at Fort Frances, Ontario, Canada. This order amends DOE/FE Opinion and Order No. 332, issued September 12, 1989, in DOE/FE Docket No. 89–12–NG.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 24, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–25649 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–16–NG]

Inter-City Minnesota Pipelines Ltd., Inc., Northern Minnesota Utilities, and ICG Utilities (Ontario) Ltd.; Order Granting Authorizations To Import and Export Natural Gas and Vacating Authorization

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting authorizations to import and export natural gas from and to Canada and

vacating authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order on a joint application filed in FE Docket No. 90–16–NG. First, it authorized ICG Utilities (Ontario) Ltd until November 1, 1990, to import from Canada into the United States and subsequently export back to Canada up to 5,502 MMcf of natural gas (less quantities received since October 31, 1989), solely for consumption in Canada. Second, it authorized Northern Minnesota Utilities (NMU) to import through October 31, 2002, up to 11,445 MMcf annually of Canadian natural gas (up to 560 MMcf of this volume for sale in western Minnesota), and then export back to Canada and reimport up to 10,885 MMcf annually for resale in eastern Minnesota. NMU was also authorized to import, export, and reimport up to 33.2 MMcf per year of additional interruptible supplies for resale in Minnesota. Third, the authority previously granted to Inter-City Minnesota Pipelines Ltd. to import and export natural gas from and to Canada was vacated because it was no longer needed.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 24, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–25650 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–66–NG]

TexPar Energy, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and to export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TexPar Energy, Inc. (TexPar) blanket authorization to import and export up to a combined total of 70 Bcf of natural gas, including liquefied natural gas, from and to Canada, Mexico, and other countries, over a two-year period beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 24, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–25648 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. EL90–35–000, et al.]

Georgia Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 22, 1990.

Take notice that the following filings have been made with the Commission:

1. Georgia Power Co.

[Docket No. EL90–35–000]

Take notice that on October 10, 1990, Georgia Power Company (Georgia Power) tendered for filing additional information concerning the rate of proposed buyout cost recovery and modifications to its proposed fuel contract buyout/buydown cost recovery mechanism in its FERC Electric Tariffs, Original Volume No. 1 (full requirements) and Original Volume No. 2 (partial requirements).

Georgia Power states that the modification is designed to assure that at the end of the recovery period, Georgia Power will refund the amount, if any, by which cumulative costs recovered exceed cumulative actual savings.

Georgia Power renews its request for an effective date of April 1, 1987. Georgia Power states that it has served copies of its filing on its two full requirements and three partial requirements customers.

Comment date: November 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Group—NEH Transmission Service Agreement

[Docket No. ER90–20–000]

Take notice that on October 10, 1990, the office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection on the behalf of the members of the PJM Interconnection (PJM) Group) and with the concurrence of the New England Hydro-Transmission Electric Company, Inc. (NEH) tendered for filing as an initial rate schedule under section 205(c) of the Federal Power Act and Part 35 of the regulations issued thereunder, a Transmission Service Agreement between the PJM Group and NEH dated October 5, 1990.

The filing party states that the Agreement sets forth the terms and conditions under which the PJM Group will provide Unscheduled Transmission Service (UTS) to NEH and the procedure for compensating the PJM Group for the service provided. Such service results from the adjustment of the PJM Group's operations at the request of NEH, on behalf of the New England Power Pool, whenever the level of electric power imports from Hydro-Quebec over the high voltage DC transmission facilities recently extended into Massachusetts, require such adjustment to meet criteria for system reliability of the PJM Group. UTS was initially provided by the PJM Group on September 28, 1990, at the request of NEH. Therefore, in order for the PJM Group to be compensated for that and any subsequent UTS provided, the filing party has requested that the Commission waive its customary notice period and allow the Agreement to become effective on September 28, 1990.

Comment date: November 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Consumer Power Co.

[Docket No. ER91–31–000]

Take notice that on October 16, 1990, Consumers Power Company (Consumers Power) tendered for filing an "Agreement for the Supply of Generating Capability and Energy Banking Service by Consumers Power Company for Toledo Edison Company dated January 1, 1990" an initial rate schedule. The Agreement calls for payment of $8,670,000 annually, subject to adjustment, for energy banking service, the terms and costs of which are based on the characteristics and costs of operating the Ludington Pumped Storage Plant, which is jointly owned by Consumers Power and the Detroit Edison Company.

Copies of the filing were served upon the Toledo Edison Company, the Ohio

Public Utilities Commission and the Michigan Service Commission.

Comment date: November 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Co.

[Docket No. ER90–578–000]

Take notice that Gulf States Utilities Company (Gulf States) on September 7, 1990, tendered for filing a description of an oral agreement between Gulf States and Alabama Electric Cooperative, Inc. (AEC) for the short-term sale of up to 200 MW of replacement energy at a rate of 21.54 mills/kwh beginning September 8, 1990. On September 26, 1990, Gulf States supplemented this filing by tendering for filing a copy of a letter agreement between Gulf States and AEC memorializing the terms of the oral agreement. October 12, 1990, Gulf States further supplemented this filing by tendering for filing temporary terms and conditions of service for the transaction.

Gulf States states that it and AEC are currently negotiating an Interchange Agreement which, among other things, would provide for the sale and purchase of replacement energy. However, the negotiation of the Interchange Agreement will not be completed in time to allow for the short-term transaction beginning September 8, 1990.

Pursuant to § 35.11 of the Commission's regulations, Gulf States requests an effective date for the letter agreement of September 8, 1990, the date on which the short-term sale began. Gulf States requests a waiver of the notice requirements of the Federal Power Act and the Commission's regulations to allow this effective date.

Copies of the filing were served on Alabama Electric Cooperative, Inc.

Comment date: November 6, 1990, in accordance with Standard Paragraph E end of this notice.

3. Timothy Guzzle

[Docket No. ID–2509–000]

Take notice that on October 12, 1990, Timothy L. Guzzle (Applicant) tendered for filing an application under section 205(b) of the Federal Power Act to hold the following positions:

Director, Tampa Electric Company.
Director, NCNB National Bank of Florida.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Edward L. Flom

[Docket No. ID–2508–000]

Take notice that on October 12, 1990, Edward L. Flom (Applicant) tendered for filing an application under section 205(b) of the Federal Power Act to hold the following positions:

Director, Tampa Electric Company.
Director, NCNB National Bank of Florida.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Guy Bostick

[Docket No. ID–2511–000]

Take notice that on October 15, 1990, Guy Bostick (Applicant) tendered for filing an application under section 205(b) of the Federal Power Act to hold the following positions:

Director, Tampa Electric Company.
Director, First Union National Bank of Florida.
Director, First Union Corporation of Florida.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Co.

[Docket Nos. ER89–265–007 and EL89–26–005]

Take notice that on October 12, 1990, Arizona Public Service Company (APS) tendered for filing a Compliance Refund Report in accordance with the Commission's letter of approval dated September 19, 1990.

Copies of this filing have been served on all affected customers and each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: November 6, 1990, in accordance with Standard Paragraph E end of this notice.

9. PSI Energy, Inc.

[Docket No. ER91–29–000]

Take notice that PSI Energy, Inc. (PSI) on October 15, 1990, formerly named Public Service Company of Indiana, Inc. tendered for filing proposed changes in its Electric Rate Schedule FERC No. 223. Such change in rates is the result of a wholesale ratemaking revenue credit methodology negotiated between PSI and Wabash Valley Power Association, Inc. (Wabash Valley).

The same ratemaking revenue credit methodology was accepted by the Commission in Docket No. ER90–380–000 for PSI's other wholesale customers as follows:

1. Cities and Towns (meaning the municipal utilities who are direct customers of PSI).
2. City of Logansport, Indiana.
3. Henry and Jackson County Rural Electric Membership Corporations.
4. Indiana Municipal Power Agency.

The reason for the wholesale ratemaking revenue credit methodology is to provide the wholesale customers with a revenue credit methodology similar to that of PSI's retail customers as approved by the Indiana Utility Regulatory Commission in Cause Nos. 37414–S2 and 38809. Such ratemaking revenue credit methodologies are for the demand-related revenues for sales of Interim Scheduled Power Agreement, dated May 24, 1989, between PSI and Wabash Valley Power Association, Inc., which has been accepted for filing in Docket No. ER89–526–000 and designated PSI's Rate Schedule FERC No. 241.

As part of the negotiations between the parties, PSI has requested the following:

1. Waiver of the notice requirements under § 25.3 of the Commission's Regulations under the Federal Power Act and an affective date of May 1, 1990, without suspension.
2. Waiver of the requirements under § 35.12 of the Commission's Regulations under the Federal Power Act not specifically addressed or complied with in the filing.

Copies of the filing were served upon Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: November 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–25569 Filed 10–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–168–000, et al.]

U–T Offshore System, et al.; Natural Gas Certificate Filings

October 22, 1990.

Take notice that the following filings have been made with the Commission:

1. U–T Offshore System

[Docket Nos. CP91–168–000 and CP91–169–000]

Take notice that on October 16, 1990, U–T Offshore System (UTOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket Nos. CP91–168–000 and CP90–169–000 requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis pursuant to UTOS's Rate Schedule IT on behalf of various shippers under UTO's blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket Nos. RP88–14–001 and RM88–15–000, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by UTOS and is summarized in the attached appendix. It is explained that the receipt points would be West Cameron Blocks 116 and 167, offshore Louisiana. The delivery points would be the interconnection between the facilities of U–TOS and the facilities of other pipelines at the Johnson's Bayou Plant, Cameron Parish, Louisiana.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No.	Shipper	Volumes—Mcf, peak day, average, annual	Related docket [1]	Commencement date
CP91–168–000	Associated Gas, Inc.	200,000 200,000 73,000,000	ST90–4805	Aug. 18, 1990.
CP91–169–000	Mobil Natural Gas, Inc.	200,000 200,000 73,000,000	ST90–4804	Aug. 18, 1990.

[1] UTOS reported the 120-day transportation service in the referenced ST dockets.

2. High Island Offshore System

[Docket Nos. CP91–174–000; CP91–175–000; CP91–176–000; CP91–177–000]

Take notice that on October 17, 1990, High Island Offshore System (HIOS), c/o ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.303 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the authorizations issued in Docket Nos. RM88–14–001 and RM88–15–000 issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day [1], average, annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91–174–000 10–17–90	Power Authority of the State of New York.	110,000 110,000 40,150,000	Off TX, Off LA	Off LA	8–20–90, IT	ST90–4536–000.
CP91–175–000 10–17–90	Pontchartrain Natural Gas System.	140,000 140,000 51,100,000	Off TX, Off LA	Off TX, Off LA	8–20–90, IT	ST90–4530–000.
CP91–176–000 10–17–90	Illinois Power Company	835,000 835,000 304,775,000	Off TX, Off LA	Off TX, Off LA	8–20–90, IT	ST90–4531–000.
CP91–177–000 10–17–90	Graham Energy Marketing Corporation.	75,000 75,000 27,375,000	Off TX, Off LA	Off TX, Off LA	8–18–90, IT	ST90–4532–000.

[1] Quantities are shown in Mcf.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. U–T Offshore System

[Docket Nos. CP91–186–000, CP91–187–000, CP91–188–000, CP91–189–000, CP91–190–000, CP91–191–000]

Take notice that on October 18, 1990, U–T Offshore System (U–TOS), P.O. Box 1396, Houston, Texas 77251, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89–99–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by U–TOS and is summarized in the attached appendix.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–186–000 (10–18–90)	Illinois Power Company (LDC).	200,000 200,000 73,000,000	Offshore Louisiana	Cameron Parish, Louisiana.	7–1–90, IT, Interruptible.	ST90–4732–000, 8–20–90.
CP91–187–000 (10–18–90)	Power Authority of the State of N.Y. (End-user).	110,000 110,000 40,150,000	Offshore Louisiana	Cameron Parish, Louisiana.	7–1–90, IT, Interruptible.	ST90–4797–000, 8–20–90.
CP91–188–000 (10–18–90)	Pontchartrain Natural Gas System (LDC).	100,000 100,000 36,500,000	Offshore Louisiana	Cameron Parish, Louisiana.	7–1–90, IT, Interruptible.	ST90–4738–000, 8–20–90.
CP91–189–000 (10–18–90)	BP Gas, Inc. (Marketer)	220,000 220,000 80,300,000	Offshore Louisiana	Cameron Parish, Louisiana.	7–1–90, IT, Interruptible.	ST90–4739–000, 8–21–90.
CP91–190–000 (10–18–90)	EP Operating Company (Producer).	10,000 10,000 3,650,000	Offshore Louisiana	Cameron Parish, Louisiana.	7–1–90, IT, Interruptible.	ST90–4815–000, 8–21–90.
CP91–191–000 (10–18–90)	Calcasieu Gas Gathering System (Marketer).	100,000 100,000 36,500,000	Offshore Louisiana	Cameron Parish, Louisiana.	7–1–90, IT, Interruptible.	ST90–4803–000, 8–21–90.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 130 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–25570 Filed 10–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–51–000]

Great Lakes Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

October 23, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on October 19, 1990, tendered for filing Second Revised Thirtieth Revised Sheet Nos. 57(i) and 57(ii) and Second Revised Sixteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the month of October, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective October 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before October 30, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–25571 Filed 10–29–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of September 7 through September 14, 1990

During the Week of September 7 through September 14, 1990, the applications for refund or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 23, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

REFUND APPLICATIONS RECEIVED

[Week of September 7 through September 14, 1990]

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/5/90	Edna L. Schmidt	RF307-10149
9/20/90	Carmichael's Exxon	RF307-10150
9/10/90	Brinkman's ARCO	RF304-11960
9/10/90	William Baker	RC272-97
9/10/90	Wooten Oil Co.	RF324-3
9/11/90	Virg's ARCO Service	RF304-11961
9/10/90	Estate of Edward Schmidt	RF307-10148
9/11/90	Mystic Fuel	RF323-13
9/12/90	Newell Fuel & Lumber Co.	RF323-14
9/13/90	Tollgate Exxon	RF307-10151
9/7/90 thru 9/14/90	Crude Oil refund, applications received	RF272-81359 thru RF272-81591
9/7/90 thru 9/14/90	Gulf Oil refund, applications received	RF300-11909 thru RF300-12044
9/7/90 thru 9/14/90	Texaco refund, applications received	RF321-9447 thru RF321-9578
9/7/90 thru 9/14/90	Shell Oil refund, applications received	RF315-10039 thru RF315-10046

[FR Doc. 90-25644 Filed 10-29-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 10 through September 14, 1990

During the week of September 10 through September 14, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Paul I. Noel, 9/11/90, LFA-0064

Paul I. Noel filed an Appeal from a denial by the Oak Ridge Operations Office of a Freedom of Information Request. Noel had sought records concerning an aircraft engine that he had removed from a U-2 aircraft during 1957. Noel stated that the engine, which he believes was contaminated with radiation, was sent to Oak Ridge. In its determination, the Operations Office stated that it could not locate any records concerning any aircraft engine. Noel argued that responsive documents must exist and asked that the Operations Office be directed to conduct an additional search for responsive documents. The DOE found that the Operations Office had conducted a thorough search of the records of Oak Ridge, and that there were no responsive documents at that facility. However, since a contaminated aircraft might have been deposited in a radioactive waste repository, the matter was remanded for a search of DOE-operated radioactive waste facilities. Accordingly, the Appeal was granted in part.

Refund Applications

Central Gulf Lines, Inc., Holland America Lines-Westours, Hawaiian Tug & Barge Corp., 9/12/90, RF272-0293, RF272-0295, RF272-0297, RD272-0293, RD272-0295, RD272-0297

Central Gulf Lines, Inc., Holland America Lines-Westours and Hawaiian Tug & Barge Corp. (collectively "the Applicants"), filed respective Applications for Refund from the Subpart V crude oil overcharge monies based upon their purchases of marine bunker and diesel during the period August 19, 1973 through January 27, 1981 (price control period). A group of 30 States and two Territories of the United States (collectively referred to as "the States") filed objections to these Applications. The States claimed that, as a result of regulations administered by the Federal Maritime Commission (FMC) and Interstate Commerce Commission (ICC), the Applicants were able to pass through in their fares any crude oil overcharges they incurred. In connection with these objections, the States also filed a Motion for Discovery in each of the refund proceedings. In considering the States' objections, the DOE determined that: (i) the States had not established that each of the Applicants was even subject to either FMC or ICC jurisdiction, and (ii) in any event, neither the FMC nor ICC regulations cited by the States constituted a means to automatically pass through increased fuel costs in the Applicants' fares. On the basis of these determinations, the DOE further determined that the States had failed to justify discovery with respect to the Applicants' refund claims. Accordingly, the Applications for Refund were approved and the States' Motions for Discovery were denied. The total of the refunds granted in this decision is $302,652.

Mid Kansas Construction Co., Inc., Johnson Bros. Corp., 9/13/90, RF272-01036, RD272-01036, RF272-01531

The DOE issued a Decision and Order granting refund monies from crude oil overcharge funds to the Mid Kansas Construction Co., Inc. and the Johnson Bros. Corp. based upon the applicants' purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants

used the petroleum products in their highway and heavy construction operations. The applicants were end-users of the products they claimed and were therefore presumed injured. A consortium of 28 States and two Territories of the United States (collectively referred to as "the States") filed virtually identical Statements of Objection with respect to the two applicants' claims. In addition, the States filed a Motion for Discovery with respect to the claim of Mid Kansas Construction Co., Inc. The DOE found that the States' filings were insufficient to rebut the presumption of injury for end-users in these cases. Therefore, the Applications for Refund were granted and the Motion for Discovery was denied. The refund granted to the Mid Kansas Construction Co., Inc. is $10,858 and the refund granted to the Johnson Bros. Corp. is $9,248.

Standard Oil Co. (Indiana)/South Dakota, Standard Oil Co. (Indiana)/South Dakota, 9/12/90, RM21–222, RM251–223

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of South Dakota. South Dakota requested permission to transfer $27,708 in *Amoco II* interest and $4,810 in *Amoco I* funds to a previously-approved Energy Conservation Grant program for non-profit organizations. This program provides matching grants to non-profit organizations for the installation of energy conservation equipment. The DOE determined that extending this program would provide restitution to injured South Dakota consumers because participating non-profit organizations would consequently have more funds available to use for providing charitable services to the public. Accordingly, the program was approved.

Texaco Inc./Saratoga Texas, 9/13/90, RF321–9522

The DOE issued a Supplemental Order in the Texaco Inc. special refund proceeding regarding Saratoga Texaco (Saratoga) (RF321–2645). In *Texaco Inc./Tiger Texaco*, Case Nos. RF321–2602 *et al.* (August 10, 1990), Saratoga was granted a refund of $5,276 based on its purchases of Texaco refined petroleum products. However, due to an ownership dispute, the refund granted to Saratoga was rescinded until the issue can be resolved.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Case name	Case number	Date
Anglen Food Service	RC272–96	9/13/90
Atlantic Richfield Co./ Graham Oil Co., *et al.*	RF304–4016	9/12/90
Atlantic Richfield Co./ Virg's Arco Service.	RF304–11961	9/13/90
Church of Jesus Christ of Latter-Day Saints.	RF272–58108	9/11/90
Fresno county, *et al.*	RF272–30420	9/13/90
Glacier Refrigerated Express, Inc., *et al.*	RF272–70178	9/14/90
Gulf Oil Corp./Coastal Corporation.	RF300–9319	9/11/90
Gulf Oil Corp./ Kentucky Utilities Co.	RF300–11784	9/13/90
Northeast Petroleum Industries/Merritt Park Service.	RF264–19	9/11/90
Shell Oil Co./Kingsport Fuels, Inc.	RF315–3566	9/10/90
Texaco Inc./Baker's Texaco.	RF321–4248 RF321–4567	9/13/90
Texaco Inc./Bowden's Texaco.	RF321–3370 RF321–8401	9/10/90
Texaco Inc./Dave's Texaco.	RF321–4000 RF321–6469	9/11/90
Texaco Inc./Gibson's Texaco.	RF321–290 RF321–7250	9/12/90
Texaco Inc./Hamilton Oil Company, *et al.*	RF321–3048	9/13/90
Texaco Inc./Hanna's Texaco, *et al.*	RF321–1793	9/11/90
Texaco Inc./Hiway Texaco.	RF321–1539 RF321–6451	9/12/90
Texaco Inc./L.M. Chvatal Oil Co.	RF321–568 RF321–8630	9/10/90
Texaco Inc./Leo's Texaco Service.	RF321–2095 RF321–5542	9/10/90
Texaco Inc./Mac's Texaco.	RF321–5250 RF321–7220	9/12/90
Texaco Inc./Tumwater Texaco.	RF321–3872 RF321–6087	9/10/90
Texaco Inc./Wade Lee Groce Texaco Station, W.L. Groce Texaco.	RF321–1467 RF321–5877	9/12/90
Texaco Inc./Walker's Texaco.	RF321–1992 RF321–4611	9/13/90
Texaco Inc./Ye Olde Town Pump.	RF321–3455 RF321–9311	9/10/90

Dismissals

The following submissions were dismissed:

Name	Case no.
A. Duda and Sons, Inc.	RD272–41555
Bob's Texaco	RF321–852
Boise School Bus Co., Inc.	RF272–60196
Gene Lively Texaco Station	RF321–281
Joe John Taormina	RF272–70095
Juliano Oil Service	RF307–4679
Lehman-Roberts	RD272–54624
McGuire & Hester	RF272–33533
Oscar's Fuel Service	RF304–5164
Parkville Esso	RF307–5023
Ramirez Brothers Texaco	RF321–5944
Simpson's Exxon	RF307–1816
T.L. James & Co.	RD272–20226
Taylor's Arco Service Station	RF304–4928
Texas Instruments, Inc.	RD272–58118
Valley Oil Co., Inc.	RF304–4506

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 23, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–25645 Filed 10–29–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of September 17 through September 21, 1990

During the week of September 17 through September 21, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dale R. Callaghan, 09/19/90, LAF–0067

Dale R. Callaghan filed a Freedom of Information Act/Privacy Act Appeal of a partial information request denial by the Albuquerque Operations Office (Albuquerque) of the Department of Energy (DOE). The DOE held that the deleted material constituted information that would reveal the identity of a source who furnished information to the government under an express promise that its identity would be held in confidence. Exemption (k)(5) expressly exempts this type of material from the access provisions of the Privacy Act. Accordingly, Mr. Callaghan's Appeal was denied.

Rockwell International, 09/19/90, LFA–0063

Rockwell International filed an Appeal from a detenmination issued by the Savannah River Operations Office of the Department of Energy of a request for information which the firm had submitted under the Freedom of

Information Act. In considering the Appeal, the DOE found that the portions of the document which Savannah River withheld pursauant to Exemption 5 were predecisional and deliberative material and the disclosure of such material would not be in the public interest. Rockwell also appealed the adequacy of the search, contending that the enclosures referred to in the body of one of the released documents should have been documents considered as part of the FOIA request. The DOE therefore remanded this aspect of the FOIA request to Savannah River for a new search. Accordingly the Appeal was granted in part.

Rockwell International, 09/19/90, LFA–0069

Rockwell International filed an Appeal from a determination issued by the Albuquerque Operations Office of the Department of Energy of a request for information which the firm had submitted under the Freedom of Information Act. Rockwell appealed the adequacy of the search conducted by Albuquerque with respect to documents which were seized by the Federal Bureau of Investigation. The DOE determined that the search was reasonable and calculated to locate documents if they had been retained in Albuquerque's possession. Rockwell's appeal was therefore denied.

Roy P. Lessy, Jr., 09/19/90, LFA–0066

Roy P. Lessy (Lessy) filed an Appeal from a partial denial by the DOE's Oak Ridge Operations Office (ORO) of a request for information under the Freedom of Information Act. Lessy had sought copies of documents relating to the DOE's use of cesium capsules, an incident involving a leaking capsule, and DOE investigations into that incident. The ORO had determined that eleven responsive documents were exempt from mandatory disclosure pursuant to Exemption 5 of the Act. Lessy challenged both the sufficiency of the ORO's reply and its determination that the withheld documents fall within the scope of Exemptions 5. Seven of the eleven documents were drafts of sections of the final investigative report into the leaking cesium capsule. An eighth document was a draft of a letter which had been released to the appellant in final form. The DOE found that draft documents, by their very nature, are predecisional and deliverative and determined that these documents were not statements of final agency policy, but rather the predecisional deliberations of their authors. Thus, they were properly withheld under Exemption 5. The DOE found that one of the remaining documents was protected by the attorney-client privilege and that the other two were properly withheld as inter-agency memoranda. The DOE also found that none of the eleven documents contained reasonably segregable factual material that could be released without compromising other properly withheld material or exposing the deliverative process. Finally, the DOE determined that any public interest in the contents of the final DOE investigative report did not extend to the preliminary drafts and working papers withheld. Accordingly, the Appeal was denied.

The National Security Archive, 09–19–90, LFA–0068

The National Security Archives (NSA) filed an Appeal from a denial by the Assistant Secretary, Office of Nuclear Energy, of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). NSA had requested information concerning a Ford Foundation paper entitled "Nuclear Power Issues and Choices." In considering the Appeal, the Department of Energy (DOE) found that the procedures used to search for documents responsive to NSA's request were reasonable and that no responsive documents could be located in DOE's possession. Accordingly, NSA's Appeal was denied.

Refund Applications

American Nuclear Corporation, 09–20–90, RF272–4152, RD272–4152

The DOE issued a Decision and Order concerning an Application for Refund filed by American Nuclear Corporation (ANC) from the crude oil overcharge funds being disbursed by the DOE. The DOE rejected a challenge to ANC's refund claim filed by a group of States, finding that the States failed to support their assertion that ANC did not absorb the crude oil overcharges. The DOE also denied a Motion for Discovery filed by the States. ANC was granted a refund of $6,101.

Exxon Corp./Whitaker Oil Co., 09/18/90, RF307–10144

In a prior Decision and Order, the DOE granted Whitaker Oil Company (Whitaker) a refund of $3,360 in the Exxon Corporation special refund proceeding, but withheld the funds from the firm because it was the respondent in a pending enforcement proceeding. In the present Supplemental Order, the DOE disburses the refund to Whitaker, since the enforcement proceeding has been settled, the settlement document makes no disposition of the refund, and the firm made a timely payment of its first installment of the settlement amount.

New Jersey Bell Telephone Co., 09/19/90, RF272–36245

New Jersey Bell Telephone Company, a public telephone utility, filed an Application for Refund in the Subpart V crude oil refund proceeding. A group of 23 States and two Territories filed objections to Bell's Application, claiming that Bell was not an injured end-user. The DOE rejected the States' arguments, finding that Bell, as a public telephone utility, should be considered an end-user of petroleum products. Therefore, the DOE found that Bell was entitled to receive a refund using the end-user presumption of injury, and that it would not be required to pass through this refund to its customers. Accordingly, Bell was granted a refund of $51,583.

Parker Leasing, Inc., 09/21/90, RF272–14585

The DOE issued a Decision and Order granting an Application for Refund in the crude oil refund proceeding filed by Parker Leasing, Inc., an end-user of refined petroleum products. In considering the claim, the DOE found that the waiver signed by the American Trucking Association and accompanying an Application for Refund from the Surface Transporters' Escrow Fund was unauthorized and therefore invalid. Accordingly, Parker was granted a refund of $4,480.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Case name	Case number	Date
Atlantic Richfield Co./ Hiller Arco.	RF304–11962 RF304–11963	09/21/90
Exxon Corporation/ W.C. Bascom, Inc..	RF307–6656	09/19/90
Marsolina Construction *et al.*	RF272–60084	09/19/90
The Permian Corporation.	RF272–54267	09/19/90
Shell Oil Company/ Amar Oil Company *et al.*	RF315–1163	09/21/90
Shell Oil Company/ Freeman Oil Company, Inc. *et al.*	RF315–7015	09/21/90
Shell Oil Co./Mehran Pejooh *et al.*	RF315–5071	09/18/90
Texaco Inc./Cole's Petroleum Bulk, Inc. *et al.*	RF321–3400	09/21/90

Case name	Case number	Date
Texaco Inc./ Gottschalk Lakeside Texaco *et al.*	RF321-304	09/20/90
Texaco, Inc./La Cumbre Texaco *et al.*	RF321-569	09/18/90
Texaco Inc./Paul's Texaco.	RF321-3164 RF321-4485	09/20/90
Texaco Inc./Pete's Texaco Star *et al.*	RF321-1506	09/20/90
Texaco Inc./Swain's Texaco.	RF321-8039 RF321-9048	09/20/90
Urban Management, Inc. *et al.*	RF272-48007	09/21/90

Dismissal

The following submissions were dismissed:

Name	Case No.
Bud & Walt's Exxon	RF307-9742
FCX, Inc.	RF307-9791
Geo. Stone Texaco	RF321-5056
Kenneth Strickland	RF272-78559
Leroy Laiser	RF272-78601
Mountain Petro/Pikeville Oil	RF321-6788
North Hills Texaco	RF321-5326
Pioneer Exxon Service Center	RF307-9743
S & J Grocery	RF307-9790
Sunset Exxon Service	RF307-9765
Sweetwater Drilling Co.	RF307-9752
Umphres Texaco Station #1	RF321-5332
Umphres Texaco Station #2	RF321-5333
Umphres Texaco Station #3	RF321-5334

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 23, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-25646 Filed 10-29-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3856-3]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard, pharmaceuticals manufacturing, wood preserving and other industries listed below to EPA contractors and subcontractors. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA), and in developing or evaluating the need for regulations under the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA). The information being transferred was collected or will be collected under the authority of section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due November 9, 1990.

ADDRESSES: Comments may be sent to Donald F. Anderson, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald F. Anderson, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7137.

For information regarding uses of CBI under RCRA authority contact Alexander McBride, Office of Solid Waste (OS-331), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4761, and James Lounsbury, Office of Solid Waste (OS-302), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4807. For information regarding uses of CBI under CAA authority contact Susan Wyatt, Office of Air Quality Planning and Standards (MD-13), Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541-5674. For information regarding uses of CBI under TSCA authority contact Dwain Winters, Office of Toxic Substances (TS-792), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-6907.

SUPPLEMENTARY INFORMATION:

1. *Information currently held by ABB Environmental Services, Inc.* EPA intends to have information previously submitted by businesses to the Agency, including CBI, transferred from the Agency's past contractor, ABB Environmental Services, Inc. of Portland, Maine (formerly E.C. Jordan Company), where it is currently being held, to new EPA contractors and subcontractors. The information being transferred consists primarily of information previously collected to support the development by EPA's Office of Water Regulations and Standards (OWRS) of effluent limitations guidelines and standards under the Clean Water Act for the pulp, paper, and paperboard, pharmaceuticals manufacturing, and wood preserving industries. In addition, information, including CBI, collected for the development of effluent limitations guidelines and standards for the following industries also may be transferred: Dairies, feedlots, fish hatcheries, foundries, fruits and vegetables, glass manufacturing, ink formulating, meat products and rendering, paint formulating, poultry processing, printing and publishing, seafood processing, sugar processing, textile manufacturing, and water supply.

More specifically, the information being transferred to the new contractors and subcontractors includes the following information previously collected under the authority of section 308 of the CWA: Questionnaire data collected for the pulp, paper, and paperboard rulemaking records in the late 1970's, 1982, and 1986, and a detailed pretest questionnaire in 1989-90; all joint EPA-industry studies, site visit reports, monitoring data, and sampling episode reports involving the pulp, paper, and paperboard industry generated in 1988-90; site visit notes, presampling visit reports, and site episode reports (including analytical results) obtained during EPA's 1988-89 study of the wood preserving industry; information collected in the late 1970's in connection with past pharmaceutical rulemaking, as well as information collected by the 1989-1990 pharmaceutical screener questionnaire and a detailed pretest questionnaire; the 1983 and 1986 pharmaceutical rulemaking records; and site visit reports, sampling episode reports, and monitoring data submissions from pharmaceutical plants generated since 1984. The information being transferred also includes similar types of information and data, such as questionnaire responses, site visit reports, analytical data, and sampling episode reports, previously collected by EPA to support rulemaking activities for the other industry categories listed above.

ABB Environmental Services was provided access to this information in order to perform its work under EPA Contract No. 68-03-3412, which ended on July 10, 1990. Radian Corporation of Herndon, Virginia and its

subcontractors (Science Applications International Corporation (SAIC); Abt Associates, Inc.; ABB Environmental Services, Inc.; Westat Inc.; VIGYAN, Inc.; and Amendola Engineering, Inc.) and its consultant, J. Floyd Byrd, have been awarded EPA Contract No. 68–CO–0032 to continue the work begun by ABB Environmental Services under EPA Contract No. 68–03–3412. In accordance with 40 CFR part 2, subpart B, all of the previously collected information (including CBI data) will be transferred from the offices of ABB Environmental Services, Inc. in Portland, Maine, to the offices of Radian Corporation in Herndon, Virginia, and the offices of Radian's subcontractors and consultant as listed below.

This information, including CBI, also will be transferred to other OWRS contractor locations as necessary for these contractors to complete their respective work assignments (e.g., technical data for statistical analyses by SAIC, McLean, Virginia; financial data for economic impact analyses by Eastern Research Group, Arlington, Massachusetts; and pollutant discharge data for environmental assessments by Versar, Springfield, Virginia, and by TetraTech, Fairfax, Virginia). This transfer of information will enable these contractors and subcontractors to carry out the work required under their contracts by assisting EPA in performing the technical, environmental, and economic analyses that will support the Agency's establishment of new and revised effluent limitations guidelines and standards for the pulp, paper, and paperboard, pharmaceutical manufacturing, and wood preserving industries.

Under their contracts, these OWRS contractors also may be supporting EPA's efforts to address new or revised effluent limitations guidelines and standards for the other industrial categories listed above at later dates in conjunction with EPA's regular reviews of rulemaking priorities under section 304(m) of the CWA, and also may assist with other program support requirements (e.g., special studies mandated by Congress, etc.).

Analyses the Agency and its contractors will perform in developing effluent limitations guidelines and standards for these industries include: Evaluating existing data within an industry and comparisons with other industries that generate similar contaminants; evaluating a profile of the industry; reviewing the existing subcategorization; gathering additional data including sampling and analytical data; and developing cost data for alternate pollution control options.

2. *Transfer of information from EPA or ABB Environmental Services, Inc. for development of regulations under authorities other than the Clean Water Act.* Some of the data collected under CWA section 308 and currently held by EPA or ABB Environmental Services, Inc. concerns air emissions from pulp, paper, and paperboard and pharmaceutical manufacturing industry facilities. EPA uses these data in revising the effluent limitations guidelines and standards under the CWA to evaluate the nonwater quality environmental impacts of air emissions associated with the various regulatory options being considered. EPA's Office of Air and Radiation (OAR) also may use these data to support development under the CAA of Control Techniques Guideline documents and to evaluate the need for a New Source Performance Standard (NSPS) and a National Emission Standard for Hazardous Air Pollutants (NESHAP) under the CAA for air emissions from pulp, paper and paperboard and pharmaceutical manufacturing industries.

Some of the collected data concerns sludge production and disposal practices for the pulp, paper, and paperboard, pharmaceutical manufacturing, and wood preserving industries. EPA collects these data because a facility's costs of complying with the revised effluent guidelines may be significantly affected by the degree to which the guidelines result in new or increased wastewater treatment sludge production and disposal operations. EPA's Office of Solid Waste (OSW) also may use this information to evaluate whether regulatory action under the Resource Conservation and Recovery Act (RCRA) is needed with respect to sludge disposal practices.

In addition, some of the data collected concerns the potential for exposure of workers at production facilities to environmental hazards, including exposure to pollutants contained in wastewaters (e.g., violate organic compounds) and in wastewater treatment sludges (e.g., dioxins and other chlorinated organics). EPA's Office of Toxic Substances (OTS) may use this information to evaluate the need for further regulatory action, including the possibility of action under the Toxic Substances Control Act (TSCA) or other statutes.

In accordance with 40 CFR part 2, subpart B, these other EPA program offices (OAQPS, OSW, OTS) and their supporting contractors and subcontractors as listed below may be provided access to information (including CBI) collected previously under CWA section 308 and described above. This transfer will allow the contractors to carry out the work required by their contracts thereby assisting these program offices in the efforts described above. This information and data which now resides at the offices of EPA or ABB Environmental Services, Inc. in Portland, Maine, will be transferred as necessary (e.g., air emissions information and data to Radian Corporation, Research Triangle Park, North Carolina; sludge disposal information and data to Research Triangle Institute, Research Triangle Park, North Carolina, to SAIC, McLean, Virginia, and to Abt Associates, Cambridge, Massachusetts; worker exposure and related data to PEI, Cincinnati, Ohio, and to Versar, Inc., Springfield, Virginia).

3. *Information collected in the future.* EPA also intends to transfer to Radian Corporation and the other OWRS contractors listed in this notice all information, of the type described above (including CBI) that may be collected in the future under the authority of CWA section 308, as is necessary to enable Radian Corporation and the other OWRS contractors to carry out the work required by their contracts to support EPA's development of effluent limitations guidelines and standards for the industries listed above. In addition, EPA intends to transfer to the supporting contractors of other EPA offices (as listed in this notice) all information gathered in the future under the authority of CWA section 308, of the type described above that is pertinent to the regulatory evaluations and rulemaking efforts of those other offices, in order for the contractors to carry out the work required by their contracts.

4. *List of EPA program offices and supporting contractors and subcontractors.* The following table presents the contractors and subcontrators that will be providing support to EPA during the development of the regulations cited above, and to whom the information described above is therefore being transferred. The EPA program offices identified in the table are as follows:

1. Office of Water (OW)

Office of Water Regulations and Standards (OWRS)
- Analysis and Evaluation Division (AED)
- Assessment and Watershed Protection Division (AWPD)
- Industrial Technology Division (ITD)

2. Office of Solid Waste and Emergency Response (OSWER)

Office of Solid Waste (OSW)
- Characterization and Assessment Division (CAD)
- Municipal Solid Waste Management Program (MSWMP)

3. Office of Pesticides and Toxic Substances (OPTS)

Office of Toxic Substances (OTS)

Economics and Technology Division (ETD)
Exposure Evaluation Division (EED)
4. Office of Air and Radiation (OAR)
Office of Air Quality Planning and Standards (OAQPS)
Emissions Standards Division (ESD)

EPA office receiving support	Contractor (P=Prime contractor S=Subcontractor	Contract No.	Type of support
OW/OWRS/ITD	Radian Corp. (P) Herndon, VA	68-C0-0032	Technical.
	ABB Environmental Services (S) Portland, ME	68-C0-0032	Do.
	Amendola Engineering (S) Cleveland, OH	68-C0-0032	Do.
	SAIC (S) McLean, VA	68-C0-0032	Do.
	Westat, Inc. (S) Rockville, MD	68-C0-0032	Do.
	Abt Associates (S) Cambridge, MA	68-C0-0032	Do.
	VIGYAN Research Associates, Inc. (S) Washington, DC	68-C0-0032	Do.
	J. Floyd Byrd, Consultant Lawrenceburg, IN	68-C0-0032	Do.
	VIAR and Co. (P) Alexandria, VA	68-C9-0019	Analytical Scheduling and Tracking.
	Interface Inc. (S) Ft. Collins, C9	68-CO-0019	Analytical.
OW/OWRS/AED	Research Triangle Institute (P) Research Triangle Park, NC	68-C8-0084	Economic.
	Eastern Research Group (S) Arlington, MA	68-C8-0084	Do.
	SAIC (P) McLean, VA	68-C0-0035	Statistical.
OW/OWRS/AWPD	TetraTech, Inc (P) Fairfax, VA	68-C9-0013	Environmental.
Institute (S)	Research Triangle, Research Triangle Park, NC	68-C9-0013	Do.
	Versar, Inc. (P) Springfield, VA	68-D9-0166	Environmental.
OAR/OAQPS/ESD	Radian Corp. (P) Research Triangle Park, NC	68-02-4378	Technical.
OTS/ETD	PEI (P) Cincinnati, OH	68-D8-0112	Do.
OTS/EED	Versar, Inc. (P) Springfield, VA	68-D9-0166	Do.
OSW	SAIC (P) McLean, VA	68-W0-0027 and 68-W0-0025.	Do.
	Abt Associates (P) Cambridge, MA	68-D0-0020/1	Do.
	Research Triangle Institute (P), Research Triangle Park, NC	68-W0-0032	Do.

5. *Security Plan for CBI.* OWRS has adopted CBI Data Security Plans for Radian Corporation and its subcontractors for information to be collected for the pulp, paper, and paperboard, and pharmaceutical manufacturing industries. The procedures in these plans also will be extended to CBI information previously gathered by OWRS and to CBI information that may be gathered in the future for the other industries identified above. Personnel of these contractors are required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI; a *need to know* must exist. Similarly, OWRS will limit access of EPA personnel from other program offices and personnel of their supporting contractors and subcontractors to only that CBI information and data needed for their respective statutory activities. All EPA contractors and subcontractors and their personnel are bound by the requirements and sanctions contained in their contracts and EPA's confidentiality regulations found at 40 CFR part 2, subpart B.

Dated: October 5, 1990.

Robert H. Wayland III,

Acting Assistant Administrator for Water.

[FR Doc. 90-25638 Filed 10-29-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00297; FRL-3839-2]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2-day meeting, beginning on October 29, 1990, and ending on October 30, 1990. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee will meet on Monday, October 29, 1990, from 8:30 a.m. to 5 p.m. and on Tuesday, October 30, 1990, beginning at 8:30 a.m. and adjourning at approximately 1 p.m.

ADDRESSES: The meeting will be held at the Days Hotel-Crystal City, 2000 Jefferson Davis Highway, Arlington, VA, (703) 920-8600.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1007, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5017.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following topics:

1. –Ground water survey status report.
2. –Pesticides and Ground Water Strategy status report.
3. –Discussion on use of FIFRA sections 24(b) and 24(c) in implementation of State Management Plans for ground water protection.
4. –Discussion of household exemption from disposal requirements and quantity triggers for secondary containment.
5. –Agricultural chemical site remediation, techniques and clean-up objectives.
6. –Other topics as appropriate.

Dated: October 22, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-25721 Filed 10-26-90; 11:38 a.m.]

BILLING CODE 6560-50-F

[FRL-3856-5]

Issuance of National Discharge Elimination System (NPDES) Permit for Occidental Chemical Company's Kenton, Ohio Facility

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given, in accordance with 40 CFR parts 121, 122 and 124 and applicable guidelines and regulations of the Clean Water Act (CWA), that a National Pollutant Discharge Elimination System (NPDES) permit was issued by the U.S. Environmental Protection Agency (U.S. EPA) Region V for the Occidental Chemical Corporation's Kenton, Ohio facility (NPDES No. OH0006769) on September 28, 1990. Requests for an evidentiary hearing on this action must be submitted within thirty (30) days following the service of notice of the Regional Administrator's final permit decision on the permittee. Any such requests shall be filed in accordance with the procedures specified in 40 CFR 124.74.

DATES: This action is effective as of October 28, 1990, and expires on November 1, 1992.

ADDRESSES: Copies of the administrative record for the permit, including the final issued permit, are available for inspection upon request at the following location: U.S. EPA, Region V, Water Division, Permits Section, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Denise Steurer of the U.S. EPA Region V's Water Division, Permits Section at the address given above, (312) 886-2446.

SUPPLEMENTARY INFORMATION: On August 13, 1986, the Ohio Environmental Protection Agency (OEPA) public noticed an NPDES permit for the Occidental-Kenton facility. U.S. EPA informed the OEPA that it did not receive adequate information to make a determination on the permit in a timely fashion, and that U.S. EPA would not concur with the issuance of the permit as drafted. On September 30, 1986, the Ohio EPA issued an NPDES permit for the Occidental-Kenton facility which did not correct the deficiencies cited in the August 13, 1986, letter. As that permit failed to impose effluent limitations and other conditions necessary to meet the requirements of the CWA, however, U.S. EPA filed, under 40 CFR 123.44(b)(2), its specific objection to the issuance of the permit on December 10, 1986. Because the State did not resubmit a permit revised to meet U.S. EPA's objections, and no public hearing was requested, exclusive authority to issue the Occidental-Kenton permit passed to U.S. EPA, Region V. The Region's draft permit, which was prepared with the assistance of the Ohio EPA, was public noticed on March 28, 1990.

The permit was issued after taking into consideration comments received by Occidental as well as revisions in Ohio's Water Quality Standards.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-25639 Filed 10-29-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 23, 1990.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB number: 3060-0069.

Title: Application for Commercial Radio Operator License.

Form number: FCC Form 756.

Action: Revision.

Respondents: Individuals or households.

Frequency of response: On occasion.

Estimated annual burden: 30,000 responses; 0.3 hours average burden per response; 9,000 hours total annual burden.

Needs and uses: The FCC Form 756 is used to issue radio operator licenses to those persons found to be qualified. To properly identify those qualified persons, it is necessary to collect the full name, date of birth and physical description of each applicant. The physical description of the applicant is placed on the Marine Radio Operator Permit licenses to guard against possible fraudulent usage. Collection of photographs of applicants for radiotelegraph licenses and physical descriptions are in accordance with the international Radio Regulations.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-25558 Filed 10-29-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Information Collection Activity Under Review by the Office of Management and Budget

ACTION: Notice: Form F-53 Submitted for Review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) has submitted to the Office of Management and Budget (OMB) a request for review of FMCS Form F-53, Notice to Federal Mediation and Conciliation Service. The request seeks OMB approval to extend the expiration date of Form F-53 from August 31, 1990 to February 28, 1991. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

Form F-53 is used to notify FMCS of a dispute in the Federal sector; that is between a Federal agency and the union representing that agencies employees. The information supplied allows FMCS to contact the parties and provide assistance. Information pertaining to Form F-53 is as follows:

Agency: Federal Mediation and Conciliation Service.

Title: Notification to Federal Mediation and Conciliation Service.

Form Number: Agency Form F-53 OMB No. 3076-0005.

Type of Request: Extension of expiration date of a currently approved collection without any change in the substance or in the method of collection.

Authority: 5 U.S.C. 7119(a) and 29 CFR part 1425.

Burden: Approximately 600 responses per year. Generally, a Form F-53 is filled out only once, the time needed to fill out the Form is about 10 minutes and the reporting burden is 100 hours per year.

Needs and Uses: The need for this Form is to obtain the name, address, phone number of the parties and the type of dispute so that this information may be used to respond to requests for FMCS assistance.

Affected Parties: Federal agencies, and labor organizations representing agency employees.

Respondents Obligation: Voluntary.

Frequency: On occasion, as needed by the parties.

Comments regarding the burden estimate given above, or any other aspects of this information collection, including suggestions for reducing the burden, should be sent to:

Diana Rowen, OMB Desk Officer, 725 17th Street, NW., Room 3001, Washington, DC 20503 (202) 395–6880

and

Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 (202) 653–5305.

Dated: October 22, 1990.

Bernard E. DeLury,

Director.

[FR Doc. 90–25584 Filed 10–29–90; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Nyle E. Barlow, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missiouri 64198:

1. *Nyle E. Barlow,* Broomfield, Colorado; to acquire an additional 5.55 percent (totalling 28.32 percent) of the voting shares of Front Range Capital Corporation, Lafayette, Colorado, parent of Bank VII, Lafayette, Lafayette, Colorado.

2. *Donald E. Imel,* Boulder, Colorado; to acquire an additional 5.18 percent (totalling 28.01 percent) of the voting shares of Front Range Capital Corporation, Lafayette, Colorado, parent of Bank VII, Lafayette, Lafayette, Colorado.

Board of Governors of the Federal Reserve System, October 24, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–25595 Filed 10–29–90; 8:45 am]

BILLING CODE 6210-01-M

Larimer Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice the applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 21, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Larimer Bancorporation, Inc.,* Fort Collins, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Interstate Bank of Fort Collins, Fort Collins, Colorado.

Board of Governors of the Federal Reserve System, October 24, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–25596 Filed 10–29–90 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Docket Nos. 9227; 9238; and 9239]

Chain Pharmacy Association of New York State, Inc., et al.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the five consent agreements, accepted subject to final Commission approval, would prohibit, among other things, the two pharmacy chains, Melville and Rite Aid (D–9227), from entering into any agreement with other pharmacy firms to withdraw from or to refuse to enter into any participation agreement. For ten years, the two chains would also be prohibited from communicating to another pharmacy firm their decision or intention to enter or to refuse to enter into such a participation agreement, and for eight years, from advising any pharmacy firm on whether to enter into any participation agreement.

The two trade associations, Empire State Pharmaceutical Society (D–9238) and Capital Area Pharmaceutical Society (D–9239), along with Alan Kadish, would be prohibited from organizing or encouraging any agreement among pharmacy firms to refuse to enter into or to withdraw from any third-party prescription plan. The consent agreements, among other things, would also prohibit the respondents, for a period of ten years, from continuing any meeting at which representatives of pharmacy firms exchange information concerning the firms' intention to enter into, refuse to enter into, or withdraw from any third-party prescription plan, and from communicating to any firm any information concerning any other pharmacy firm's intention to enter into, refuse to enter into, or to withdraw from any existing or proposed third-party prescription plan.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McNeely, FTC/S–3308, Washington, DC 20580. (202) 326–2904.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's

rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Drug Co., Inc., a corporation; Kinney Drugs, Inc., a corporation; Melville Corp., a corporation; Peterson Drug Co. of North Chili, New York, Inc., a corporation; Rite Aid Corp., a corporation; and James E. Krahulec, an individual.

Docket No. 9227

Agreement Containing Order To Cease and Desist

The agreement herein, by and between Melville Corporation, a corporation, hereinafter sometimes referred to as "Melville" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Melville Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at _____ One Theall Road _____ in the City of _____ Rye _____, State of New York 10580.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of the order, the following definitions shall apply:

A. *Melville* means Melville Corporation, its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider orgainzations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. Participation agreement means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agree to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. Pharmacy firm means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sold proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Melville. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Melville, directly, indirectly, or through any corporate or other device, in or in connection with its pharmacy operations and activities,

including but not limited to those of its CVS division, in or affecting commerce, as "commerce' is defined in section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking Aany action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Melville with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Melville and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order become final, advising any pharmacy firm with respect to entering into, refusing to enter into, participating in, or withdrawing from any existing or proposed participation agreement into which Melville and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Melville from:

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer; or

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

III

It is further ordered that Melville:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Melville's behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in Paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

IV

It is further ordered that Melville:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Melville, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all documents generated by Melville or that come into Melville's possession, custody, or control regardless of source, that embody, discuss or refer to the decision or upon which Melville relies in deciding whehter to enter into any participation agreement in which Melville participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Melville such as, assignment or sale resulting in the emergency of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

In the Matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Drug Co., Inc., a corporation; Kinney Drugs, Inc., a corporation; Melville Corp, a corporation; Peterson Drug Co., of North Chili, New York, Inc., a corporation; Rite Aid Corp., a corporation; and James E. Krahulec, an individual.

Agreement Containing Order To Cease and Desist

Docket No. 9227

The agreement herein, by and between Rite Aid Corporation, a corporation, hereinafter sometimes referred to as "Rite Aid" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Rite Aid Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Railroad Avenue and Trindle Road, in the City of Shiremanstown, State of Pennsylvania, 17011.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and concusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission

may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of the order, the following definitions shall apply:

A. *Rite Aid* means Rite Aid Corporation, its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Rite Aid. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Rite Aid, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) Boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Rite Aid with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Rite Aid and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order becomes final, advising any pharmacy firm with respect to entering into, refusing to enter into, participating in, or withdrawing from any existing or proposed participation agreement into which Rite Aid and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Rite Aid from

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer;

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

III

It is further ordered that Rite Aid:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Rite Aid's behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in. Paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

IV

It is further ordered that Rite Aid:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Rite Aid, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all

documents generated by Rite Aid or that come into Rite Aid's possession, custody, or control regardless of source, that embody, discuss or refer to the decision or upon which Rite Aid relies in deciding whether to enter into any participation agreement in which Rite Aid participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Rite Aid such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to a proposed consent order from Melville Corporation ("Melville") and Rite Aid Corporation ("Rite Aid") ("respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

Description of Complaint

A complaint that the Commission issued on April 19, 1989, alleges that respondents agreed with others to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreement coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts.

Melville operated a chain of drug stores under the name CVS, including approximately 115 stores in New York State, in 1986. The allegations of the complaint with respect to Melville are based on the activities of the CVS division ("CVS") of Melville. Rite Aid operated approximately 260 pharmacies in New York State in 1986. CVS and Rate Aid were both members of the Chain Pharmacy Association of New York State ("Chain Association").

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000 beneficiaries. New York State selected PAID Prescription, Inc. to administer the Program. Pharmacies that participate in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, respondents participated in many prescription drug benefit plans, including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredent costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Each respondent purchased prescription drugs at an average cost that was below the level of reimbursement for ingredients costs that was offered. Each respondent would have suffered a loss of customers if its competitors had participated in the program at a time when it was not participating.

The complaint alleges that during or before March 1986, the State of New York informed the Chain Association of the proposed terms of the Program. The Chain Association then informed respondents and other pharmacies of the proposed terms. The Chain Association told its members that the extent to which pharmacies participated in the Program could affect state officials' consideration of the Program's reimbursement level. The Chain Association held meetings at which some members stated that they would not participate in the Program. Respondents and other pharmacy firms also discussed their intentions regarding participation in the Program outside of Chain Association meetings. The complaint further alleges that through these exchanges of information and other acts, respondents agreed with others to refuse to participate in the Program to coerce the State of New York to increase the level of reimbursement under the Program.

The complaint alleges that the agreement to refuse to participate in the Program injured consumers in New York State by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the conspiracy by respondents and others forced New York State to pay sustantial additional sums for prescription drugs provided to beneficiaries of the Program.

Description of the Proposed Consent Orders

The proposed orders would require each respondent to cease and desist from entering into any agreement among pharmacy firms to withdraw from or refuse to enter into any participation agreement. The proposed order would also prohibit each respondent, for a period of ten years, from communicating to any pharmacy firm the respondent's decision or intention to enter into or refuse to enter into any participation agreement. The proposed order would also prohibit each respondent, for a period of eight years, from advising any pharmacy firm with respect to entering into or refusing to enter into any participation agreement.

The orders would not prohibit either respondent from: (a) Petitioning the government on matters involving legislation, rules or procedures; (b) jointly undertaking with other pharmacy firms to provide prescription drug services so long as the third-party payer requests in writing that the respondent do so; or (c) making truthful and nondeceptive public statements about existing or proposed participation agreements. The orders would permit respondents to provide comments or advice to pharmacy firms concerning the desirability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, a respondent could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott a third-party prescription plan.

The orders would require each respondent to distribute a copy of the order to certain employees and others, to file compliance reports, to retain certain documents, and to notify the Commission of certain changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

The proposed consent orders have been entered into for settlement

purposes only and do not constitute an admission by either respondent that the law has been violated as alleged in the complaint.

Docket No. 9238

Agreement Containing Consent Order To Cease and Desist

In the Matter of Empire State Pharmaceutical Society, Inc., a corporation.

The agreement herein, by and between Empire State Pharmaceutical Society, Inc., a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 12 West 23rd Street, New York, New York 10010.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 15.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Repsondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. *Empire* means the Empire State Pharmaceutical Society, Inc. and its directors, committees, officers, representatives, agents, employees, successors and assigns;

B. *Third-party payer* menas any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Empire, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, continuing a formal or informal meeting of representatives of pharmacy firms after (1) any person makes any statement concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement and Empire fails to eject such person from the meeting, or (2) two persons make such statements;

C. For a period of ten (10) years after the date this order becomes final, communicating to any pharmacist or pharmacy firm any information concerning any other pharmacy firm's intention or decision with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; and

D. For a period of eight (8) years after the date this order becomes final, providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of participating in any existing or proposed participation agreement. However, nothing in this paragraph shall prohibit Empire from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers.

Provided that nothing in this order shall be construed to prevent Empire from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

III

It is further ordered that Empire:

A. Publish this order and the accompanying complaint in an issue of the Empire newsletter or in any successor publication published no later than sixty (60) days after the date this order becomes final, in the same type size normally used for articles that are published in the Empire Newsletter or successor publication;

B. For a period of five (5) years after the date this order becomes final, provide each new Empire member, at the time the member is accepted into membership, with a copy of the Empire newsletter in which this order and the accompanying complaint was published as required by Paragraph III.A.;

C. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Empire, require, setting forth in detail the manner and form in which it has complied and is complying with the order;

D. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including, but not limited to, all documents generated by Empire or that come into Empire's posssession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

E. Notify the Commission at least thirty (30) days prior to any proposed change in Empire such as assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, or any other change that may affect compliance with this order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to proposed consent order. The agreement is from the Empire State Pharmaceutical Society ("Empire").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of Complaint

The complaint issued by the Commission on March 15, 1990, alleges that members of Empire agreed to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreements coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts:

Empire is an association of pharmacy owners in the State of New York.

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000 beneficiaries. New York State selected PAID Prescriptions, Inc. to administer the Program. Pharmacies that participate in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, members of Empire participated in many prescription drug benefit plans, including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredient costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Members of Empire would have suffered a loss of customers if their competitors had participated in the Program at a time when they were not participating.

The complaint alleges that, during 1986, New York State informed Empire of the proposed terms of the Program and Empire then communicated this information to its members. Thereafter, Empire held a meeting at which owners of pharmacy firms informed other owners of pharmacy firms that they would not participate in the Program. Empire exhorted pharmacy owners to refuse to participate in the Program. The complaint further alleges that through these exchanges of information and other acts, and through the activities of Empire, members of Empire and other owners of pharmacy firms agreed to refuse to participate in the Program at the proposed reimbursement level, for the purpose of increasing the level of reimbursement offered by the State of New York under the Program.

The complaint alleges that the agreements to refuse to participate in the Program injured consumers in New York by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the agreements to refuse to participate in the Program forced New York State to pay substantial additional sums for prescription drugs provided to beneficiaries of the Program.

Description of the Proposed Consent Orders

The proposed order would require Empire to cease and desist from organizing or encouraging any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party prescription plan, such as the Program. The proposed order would prohibit Empire, for ten years, from continuing any meeting at which representatives of pharmacy firms exchange information about whether they will enter into or refuse to enter

into any third-party prescription plan. The proposed order would also prohibit Empire, for ten years, from communicating to any pharmacy firm the decision or intention of any other pharmacy firm to enter into or refuse to enter into any third-party prescription plan. The proposed order would also prohibit Empire, for eight years, from providing comments or advice to any pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party prescription plan. The proposed order would allow Empire to communicate purely factual information describing the terms and conditions of any third-party prescription plan.

The proposed order would not prohibit Empire from petitioning the government on matters involving legislation, rules, programs or procedures. The order also would permit Empire to provide comments or advice to pharmacy firms concerning the desirability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, Empire could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott the third-party prescription plan.

The proposed order would require Empire to distribute a copy of the order to certain employees and others. The proposed order also would require Empire to file compliance reports, to retain certain documents, and to notify the Commission of changes that may affect compliance with the orders.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Empire that the law has been violated as alleged in the complaint.

Agreement Containing Consent Order to Cease and Desist

Docket No. 9239

In the Matter of Capital Area Pharmaceutical Society, a corporation.

The agreement herein, by and between Capital Area Pharmaceutical Society, a corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at Pine West Plaza IV, Washington Avenue Extension, Albany, New York 12205.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 15.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. *CAPS* means the Capital Area Pharmaceutical Society and its directors, committees, officers, representatives, agents, employees, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and any of the above which contract with the State of New York or other governmental units to provide health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or

written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that CAPS, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this Order becomes final, organizing, sponsoring, or facilitating a meeting that CAPS expects or reasonably should expect will facilitate communications concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement, or from continuing a meeting of representatives of pharmacy firms at which: (1) CAPS fails to eject from the meeting a person who makes any such communication; or (2) two persons make any such communications;

C. For a period of ten (10) years after the date this Order becomes final, communicating to any pharmacist or pharmacy firm any information concerning any other pharmacy firm's intention or decision with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

D. For a period of eight (8) years after the date this Order becomes final, providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness or participating in any existing or proposed participation agreement. However, nothing in this paragraph shall prohibit CAPS from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers; and

Provided that nothing in this Order shall be construed to prevent CAPS from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

III

It is further ordered that CAPS:

A. Distribute by first-class mail a copy of this Order and the accompanying complaint to each of its members within thirty (30) days after the date this Order becomes final;

B. Publish this Order and the accompanying complaint in an issue of the CAPS newsletter or in any successor publication published no later than sixty (60) days after the date this Order becomes final, in the same type size normally used for articles that are published in the CAPS Newsletter or successor publication;

C. For a period of five (5) years after the date this Order becomes final, provide each new CAPS member with a copy of this Order at the time the member is accepted into membership;

D. File a verified, written report with the Commission within ninety (90) days after the date this Order becomes final, and annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may, by written notice to CAPS, require, setting forth in detail the manner and form in which it has complied and is complying with the Order;

E. For a period of five (5) years after the date this Order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including, but not limited to, all documents generated by CAPS or that come into CAPS's possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

F. Notify the Commission at least thirty (30) days prior to any proposed change in CAPS such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, or any other change that may affect compliance with this Order.

Agreement Containing Consent Order To Cease and Desist As To Respondent Alan Kadish

Docket No. 9239

In the Matter of Capital Area Pharmaceutical Society, a corporation; and Alan Kadish, an individual.

The agreement herein, by and between Alan Kadish, an individual, hereafter sometimes referred to as respondent, and his attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Mr. Kadish resides at 24 Quincy Court, Goldens Bridge, New York 10526. His office and principal place of business are at Kadish Pharmacy, 670 North Broadway, White Plains, New York 10603.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violation of section 5 of the Federal Trade Commission Act.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60)

days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. *Mr. Kadish* means Alan Kadish, his representatives, agents, and employees;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

It is ordered that Mr. Kadish, directly, indirectly, or through any device, in or in connection with his activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, continuing to attend, in the capacity of an officer or a director of any society or association of pharmacists or pharmacy firms, a formal or informal meeting of representatives of pharmacy firms not owned or controlled by Mr. Kadish or Mr. Kadish's employer after (1) any person makes any statement concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement and such person is not ejected from the meeting, or (2) two persons make such statements;

C. For a period of ten (10) years after the date this order becomes final, communicating to any pharmacist not employed by Mr. Kadish or Mr. Kadish's employer or any pharmacy firm not owned or controlled by Mr. Kadish or Mr. Kadish's employer any information concerning any pharmacy firm's intention or decision with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; and

D. For a period of eight (8) years after the date this order becomes final, providing comments or advice to any pharmacist not employed by Mr. Kadish or Mr. Kadish's employer or to any pharmacy firm not owned or controlled by Mr. Kadish or Mr. Kadish's employer on the desirability or appropriateness of participating in any existing or proposed participating agreement. However, nothing in this paragraph shall prohibit Mr. Kadish from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers.

Provided that nothing in this Order shall be construed to prevent Mr. Kadish from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

III

It is further ordered that Mr. Kadish:

A. Shall file a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five years on the anniversary of the date this order was served, and at such other times as the Commission may, by written notice to Mr. Kadish, require, setting forth in detail the manner and form in which he has complied and is complying with the order;

B. For a period of five (5) years after the date of service of this order, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of the order, including, but not limited to, all documents generated by Mr. Kadish or that come into his possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

C. Notify the Commission within thirty (30) days of any change that may affect compliance with the order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, two agreements to proposed consent orders. The agreements are from the Capital Area Pharmaceutical Society ("CAPS"), and Alan Kadish, an individual ("Kadish") ("respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

Description of Complaint

The complaints issued by the Commission on March 15, 1990, allege that members of CAPS and Kadish agreed to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreements coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts:

CAPS is an association of pharmacists who practice or reside in the Albany, New York area. In 1986, CAPS was affiliated with other local, county, and specialty pharmacy societies, including the Pharmaceutical Society of the State of New York ("PSSNY") Alan Kadish was President of PSSNY in 1986.

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000 beneficiaries. New York State selected PAID Prescriptions, Inc. to administer the Program. Pharmacies that participate in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, members of CAPS participated in many prescription drug benefit plans, including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredient costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Members of CAPS would have suffered a loss of customers if their competitors had participated in the Program at a time when they were not participating.

The complaint alleges that during 1986, New York State informed PSSNY and Kadish in his capacity as President of PSSNY of the propposed terms of the Program and PSSNY communicated this information to its affiliated societies, including CAPS. CAPS held meetings at which owners of pharmacy firms informed other owners of pharmacy firms that they would not participate in the Program. Respondents communicated to pharmacists and pharmacy owners information regarding the intentions of pharmacy firms located throughout the state concerning participation in the Program. Kadish exhorted pharmacy owners to refuse to participate in the Program. The complaint further alleges that through these exchanges of information and other acts, and through the activities of CAPS and Kadish, members of CAPS and Kadish and other owners of pharmacy firms agreed to refuse to participate in the Program at the proposed reimbursement level, for the purpose of increasing the level of reimbursement offered by the State of New York under the Program.

The complaint alleges that the agreeements to refuse to participate in the Program injured consumers in New York by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the agreements to refuse to participate in the Program forced New York State to pay substantial additional sums for prescription drugs provided to beneficiaries of the Program.

Description of the Proposed Consent Orders

The proposed orders would require CAPS and Kadish to cease and desist from organizing or encouraging any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party prescription plan, such as the Program. the proposed orders would prohibit CAPS, for ten years, from continuing any meeting and Kadish, in his capacity as an officer or director of a society, for ten years, from continuing to attend any meeting at which representatives of pharmacy firms exchange information about whether they will enter into or refuse to enter into any third-party prescription plan. The proposed orders would also prohibit CAPS and Kadish, for ten years, from communicating to any pharmacy firm the decision or intention of any other pharmacy firm to enter into or refuse to enter into any third-party prescription plan. The proposed orders would also prohibit CAPS and Kadish, for eight years, from providing comments or advice to any pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party prescription plan. The proposed orders would allow respondents to communicate purely factual information describing the terms and conditions of any third-party prescription plan.

The proposed orders would not prohibit CAPS or Kadish from petitioning the government on matters involving legislation, rules, programs or procedures. The orders also would permit respondents to provide comments or advice to pharmacy firms concerning the desiriability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, a respondent could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott the third-party prescription plan.

The proposed CAPS order would require CAPS to distribute a copy of the order to certain employees and others. The proposed orders would require each respondent to file compliance reports, to retain certain documents, and to notifiy

the Commission of changes that may affect compliance with the orders.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

The proposed consent orders have been entered into for settlement purposes only, and do not constitute an admission by either of the respondents that the law has been violated as alleged in the complaint.

By the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 90-25620 Filed 10-29-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3307]

Twin Star Productions, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an infomercial marketing corporation and six individuals, all based in Scottsdale, Arizona, from making specified representations regarding the efficacy of certain purported weight loss, baldness and impotence products; from making unsubstantiated efficacy claims concerning weight loss, baldness and importence for any products or services; from using endorsements, unless the respondents have good reason to believe that the endorsements reflect the honest opinion or belief of the endorser; from disseminating four different infomercials, including a 30-minute advertisement for a book; and from misrepresenting that their commercials are independent programs and not paid advertising. In addition, the consent order requires the corporation and five of the six individuals to pay a total of $1.5 million in consumer redress.

DATES: Complaint and Order issued October 2, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Tracy Thorleifson, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 442-4656.

SUPPLEMENTARY INFORMATION: On Wednesday, April 26, 1990, there was published in the **Federal Register,** 55 FR 17494, a proposed consent agreement with analysis In the Matter of Twin Star Productions, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 90-25619 Filed 10-29-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0321]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris (3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6-(1H, 3H, 5H) trione as an antioxidant for polymethylpentene homopolymers used in contact with food.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409 (b)(5) (21 U.S.C. 348(b)(5))), notice is given that Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, has filed a petition (FAB 0B4219) proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris (3,5-di-*tert*-butl-4-hydroxybenzyl)-*s*-triazine-2, 4, 6-(1H, 3H, 5H) trione as an antioxidant for polymethylpentene homopolymers used in contract with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-25600 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0310]

The Goodyear Tire and Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Goodyear Tire and Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,11-(3,6,9-trioxaundecyl)bis-3-(dodecylthio)propionate as an antioxidant for can and cements used in contact with food.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that The Goodyear Tire and Rubber Co., Akron, OH 44316-0001, has filed a petition (FAP 0B4223), proposing that the food additive regulations be amended to provide for the safe use of 1,11-(3,6,9-trioxaundecyl)bis-3-(dodecylthio)propionate as an antioxidant for can end cements used in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-25601 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0443]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in baked goods and baking mixes.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Hoechst Celanese Corp., Route 202-206 North, Somerville, NJ 08876, has filed a petition (FAP OA4225) proposing that the food additive regulations in § 172.800 *Acesulfame potassium* (21 CFR 172.800) be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in baked goods and baking mixes.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-25601 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Federal Council on the Aging; Meeting

AGENCY HOLDING THE MEETING: Federal Council on the Aging, HHS.

TIME AND DATE: Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, November 14, 1990, and begins at 9 a.m. and ends at 5 p.m., on Thursday, November 15, 1990.

PLACE: On Wednesday, November 14 and Thursday, November 15, from 9 a.m. to 5 p.m., in (Conference room to be announced) of the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

STATUS: Meeting is open to the public.

CONTACT PERSON: Kevin W. Parks, room 4280, Wilbur Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its first quarterly meeting for FY 91 on November 14 and 15, 1990, from 9 a.m.to 5 p.m. respectively at the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

The agenda will include: The Council's regular business meeting during the morning session on November 14 from 9 to 10:30 a.m. and a presentation by the Nutritionist from the Texas Department on Aging and others about the Older Americans Act Nutrition program from 10:30 a.m. to 12 noon. The afternoon session will begin at 1:30 p.m. and end at 5 p.m. and will be devoted to background information about the evolution of the Older Americans Act and the 1991 Amendment issues. Congressional Aging Committee staff and representatives from various national aging organizations will make presentations about current issues and concerns.

On Thursday, November 15, the day long session will be devoted to a discussion about model mental health programs and methods for assisting older persons and their caregivers in accessing community based mental health services.

Dated: October 23, 1990.

Ingrid C. Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 90-25568 Filed 10-29-90; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; AIDS Research Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Research Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on December 3-4, 1990, in the Regency Room at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The entire meeting will be open to the public from 9 a.m. on December 3 to adjournment at 5 p.m. on December 4. The committee will discuss the status of parallel track, review the AIDS Clinical Trails Group Recompetition plan, examine the role of the committee in the evalution of unproven therapies, and plan for the next meeting. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717) will provide a summary of the meeting and a roster of the committee members upon request.

Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, Division of Acquired Immunodeficiency Syndrome, NIAID, NIH, Control Data Building, Room 201N, telephone (301-496-0545), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: October 22, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-25545 Filed 10-29-90; 8:45 am]

BILLING CODE 4410-01-M

Public Health Service

National Toxicology Program; Chemicals (10) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On September 12, 1990, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review ten chemicals nominated for in-depth toxicological studies, and to recommend the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register**. The CEC is composed of representatives from the agencies participating in the NTP. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response will be reviewed by NTP technical staff for use in the further evaluation of the chemicals for NTP toxicological studies. The NTP chemical nomination and selection process is summarized in the **Federal Register**, April 1981 (46 FR 21828), and also in the NTP FY 1989 Annual Plan, pages 17–20.

On September 12, 1990, the CEC met to evaluate ten chemicals nominated to the NTP for in-depth toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS registry No.	Committee recommendations
p,p'-Dichlorodiphenyl sulfone.	80-07-9	Subchronic studies, Mutagenicity.
Dicyclopentadiene.	77-73-6	Carcinogenicity, Reproductive, Teratogenicity.
Ethoxyquin	91-53-2	Carcinogenicity, Reproductive, Teratogenicity, Comparative chemical disposition studies in rodents and other animal species.
Methylene Blue	61-73-4; 7720-79-3	Carcinogenicity, Reproductive, Teratogenicity, Determine whether Neurotoxicity studies are needed.
Phosphine	7803-51-2	No testing.
Propylene glycol t-butyl ether.	57018-52-7	Carcinogenicity, Chemical disposition studies by dermal and oral routes, Reproductive, Teratogenicity.
Calcium naphthenate.	85763-67-3	Defer.
Cobalt naphthenate.	61789-51-3	Defer.
Copper naphthenate.	1338-02-9	Defer.
Sodium naphthenate.	61790-13-4	Defer.

It was reported at the meeting that data from acute and prechronic studies on some naphthenates might be available from an industry association. Therefore, the CEC deferred calcium naphthenate, cobalt naphthenate, copper naphthenate, and sodium naphthenate pending the retrieval and evaluation of this information.

Two of the chemicals, dicyclopentadiene and ethoxyquin, were previously tested in *Salmonella* by the NTP and were found to be nonmutagenic in this assay. In addition, the NTP is currently conducting a chemical disposition study of cobalt administered as cobalt naphthenate.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by December 7, 1990, to Dr. Fung. Any submissions received after the above date will be accepted and utilized where possible.

Dated: October 23, 1990.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 90-25546 Filed 10-29-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3165]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and

hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 19, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Inspection of Insured Projects.

Office: Housing.

Description of the need for the Information and its Proposed Use: The Department's mortgage insurance programs require mortgagees to annually inspect each insured project and provide the Department and the project owner a report on that inspection. This format establishes standards which all mortgagees must comply with when conducting these inspections.

Form Number: HUD–9822.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	No. of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–9822	15,000		1		2		30,000

Total Estimated Burden Hours: 30,000.

Status: Extension.

Contact: Eugene R. Fogel, HUD (202) 708–4162, Scott Jacobs, OMB, (202) 395–6880.

Dated: October 19, 1990

[FR Doc. 90–25530 Filed 10–29–90; 8:45 am]

BILLING CODE 4210–01–M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–90–3051; FR–2800–N–02]

Single Room Occupancy Announcement of Funding Awards; White River, AK, et al.

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: The purpose of this Notice is to announce the awarding of $73.1 million in rental assistance funds for Single Room Occupancy (SRO) Dwellings for Homeless Individuals. The $73 million—$7.3 million a year for 10 years—is being awarded to 33 public housing authorities (PHAs) around the country to support 1,612 single room occupancy units of permanent housing for homeless individuals. Under the Section 8 Moderate Rehabilitation Program, funds are awarded to PHAs selected through a national competition.

FOR FURTHER INFORMATION CONTACT: Mary Maher, Moderate Rehabilitation Branch, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–4969. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In a Notice published on May 10, 1990 (55 FR 19704) the public was informed of the availability of $73 million appropriated for the program by the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1990 (Pub. L. 101–144, approved November 9, 1989). The SRO program is authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628, approved November 7, 1988).

A total of 71 PHAs submitted applications in this funding round: the 33 selected in the competitive process best demonstrated a need for the assistance and the ability to undertake the program and carry it out expeditiously.

The competitive process is specifically designed to ensure the selection of feasible projects that meet the special needs of the single homeless population. (A different process applies to regular Moderate Rehabilitation funds, which are allocated on a "fair share" basis to PHAs in areas of greatest need.)

In their applications, PHAs were required to identify the sponsors of the proposed projects, specific structures to be rehabilitated, prospective sources of acquisition or rehabilitation financing, and a plan for providing supportive services for homeless individuals to be housed in the units.

Under the program, rental assistance payments made by HUD cover the difference between 30 percent of the tenant's income and the rent for the SRO dwelling. Rents are determined by the PHA, within limits established by HUD. SRO dwellings are those which may lack food preparation or sanitary facilities, or both, within the individual unit.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the city, state, number of units, and amount of these awards, as follows:

SINGLE ROOM OCCUPANCY AWARDS

Location	No. of units	Ten-year budget authority
White River, AK	100	$2,544,000
Berkeley, CA	106	5,889,360
Los Angeles, CA	125	6,930,000
Oakland, CA	94	5,223,640
San Francisco, CA	60	3,996,000
Pueblo, CO	19	647,520
Waterbury, CT	100	4,152,000
Washington, DC	6	314,640
Savannah, GA	40	1,195,200
Twin Falls, ID	24	789,120
Chicago, IL	29	1,315,440
Dubuque, IA	11	357,720
Baltimore, MD	26	1,032,720
Amesbury, MA	24	1,218,240
Boston, MA	114	6,976,800
Somerville, MA	12	734,400
Duluth, MN	15	493,200
Minneapolis, MN	51	2,068,560
Manchester, NH	24	1,080,000
Camden, NJ	8	335,040
Newark, NJ	57	2,865,960
Passaic, NJ	40	2,424,000
Albuquerque, NM	12	460,800
Bronx, NY	42	1,884,960
Brooklyn, NY	53	2,378,640
Chappaqua, NY	13	695,760
New York, NY	66	2,962,080
Stutsman, ND	12	342,720
Toledo, OH	21	725,760
Lehigh, PA	20	717,600
Philadelphia, PA	48	2,010,240
San Juan, PR	49	1,693,440
Nashville, TN	100	3,492,000
Austin, TX	49	1,840,440
Tacoma, WA	42	1,375,920
Totals	1,612	73,162,920

Dated: October 24,1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-25532 Filed 10-29-90; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. D-90-934]

Charleston Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective immediately.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106-3392. Phone number (215) 597-2655 (This is not a toll-free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager; Provided: That no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Director, Housing Division,
2. Chief, Assisted Housing Management Branch,
3. Chief, Housing Development Branch,
4. Chief, Loan Management and Property Disposition Branch.

This designation supersedes the designation effective 12/1/83.

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: October 1, 1990.

Michael P. Kulick,

Manager, Charleston Field Office.

[FR Doc. 90-25529 Filed 10-29-90; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. N-90-3166; FR 2924-N-01]

The Performance Review Board

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Jerry R. Pierce as Acting Vice-Chairperson, Eleanor M. Clark and Laurence D. Pearl as members, and Michael B. Janis as an alternate member to the Departmental Performance Review Board. Their address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Donald J. Keuch, Jr., Director, Office of Personnel and Training, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 708-2000. (This is not a toll-free number.)

Dated: October 22, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90-25531 Filed 10-29-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974, Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing records maintained by the U.S. Geological Survey. All changes are editorial in nature, clarify and update existing statements, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the Federal Register. The two notices being revised, which are published in their entirety below, are:

1. Personnel Investigations Records-Interior, USGS-23; (previously published on December 19, 1988; 53 FR 51016).

2. Employee Work Report Edit and Individual Employee Production Rates-Interior, USGS-24; (previously published on Febraury 16, 1988; 53 FR 4468).

In one notice (USGS-23), the existing storage and safeguard statements are revised to accurately reflect the manner in which the records are maintained. In one notice (USGS-24), the existing system manager(s) and address statement is revised to reflect the correct title and address of one system manager.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective October 30, 1990. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Dated: October 22, 1990.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

INTERIOR/USGS-23

SYSTEM NAME:

Personnel Investigations Records—Interior, USGS-23.

SYSTEM LOCATION:

Security Office, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 150, Reston, VA 22092.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current Geological Survey employees who (a) are granted access to classified information; (b) are filing sensitive positions not requiring access to classified information; (c) are being considered either for access to classified information or for filling sensitive positions not requiring access to classified information; and (d) are found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

2. Former Geological Survey employees who (a) were granted access to classified information; (b) were filling sensitive positions not requiring access to classified information; and (c) were found unsuitable for access to classified information or filling sensitive positions because unfavorable information was revealed during the conduct of their security investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations against the law; reports of interviews with present and former

supervisors, co-workers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with or from law enforcement agencies, employers, and educational institutions attended; foreign affiliations which may affect his or her loyalty to the United States; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be disclosed and used as follows: (1) to designated officials, officers, and employees of the USGS, DOI, OPM, DOE, CIA, FBI, and all other agencies and departments of the Federal Government who in the performance of their duties have an interest in the individual for employment purposes, including a security clearance or access determination, and a need to evaluate qualifications, suitability, and loyalty to the United States Government; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All investigative records are maintained in file folders stored in locked file cabinets in a secure office using an off-master key system.

RETRIEVABILITY:

All records are indexed by surname in alphabetical order.

SAFEGUARDS:

The card index for this system of records is contained in a metal cabinet with a secure key locking device. All containers and cabinets are further secured in a windowless room having one doorway which is secured by a key locking device. Access to all key locking devices is under stringent security controls.

RETENTION AND DISPOSAL:

(a) OPM background investigative files supporting secret-sensitive decompartmented information and top secret-infrequent access to sensitive compartmented information are retained until the awarded security clearance or employment is terminated. All other OPM investigative files are routinely destroyed within 90 days after receipt or upon completion of the adjudication action, whichever occurs last. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15b.

(b) All information, supplementing the above OPM investigative files, originated by the Geological Survey, is retained for two years following termination of awarded security clearance or employment, whichever occurs first, and is then destroyed. Disposition of files is made in accordance with the Bureau Records Disposition Schedule, RCS/Item 306–15a.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer/Alternate Security Officer, Office of Facilities and Management Services, Administrative Division, U.S. Geological Survey, National Center, Mail Stop 150, Reston, Virginia 22092.

NOTIFICATION PROCEDURE:

Written inquiries to the System Manager are required and must include the following information in order to positively identify the individual whose records are requested: (1) Full name, (2) date of birth, (3) place of birth, (4) any available information regarding the type of record requested. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual can obtain information on the procedures for gaining access to and contesting the records from the above System Manager. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES

Same as above. See 43 CFR 2.71

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the following categories of sources: (1) Applications and other personnel and security forms furnished by the individual, (2) Results of investigations and other material furnished by Federal agencies.

INTERIOR-USGS–24

SYSTEM NAME:

Employee Work Report Edit and Individual Employee Production Rates—Interior, USGS–24.

SYSTEM LOCATIONS:

1. Eastern Mapping Center, National Mapping Division, U.S. Geological Survey, National Center, Stop 567, Reston, Virginia 22092.

2. Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1400 Independence Road, Rolla, Missouri 65401.

3. Rocky Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225.

4. Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Production employees in Mapping Centers.

CATEORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number, cost and production rates, hours, and square miles mapped by individual production employees in each of the offices listed above, as well as Geological Survey professionals (geographers, cartographers, etc.) who conducted research and investigations for which results are published in Geological Survey reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3010; 43 U.S.C. 31, 1467.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for analysis of cost and production rates for individual employees and for units of National Mapping Division. Disclosure outside the Department of the Interior may be made: (1) to the U.S. Department of Justice or in a proceeding before a court of adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the

Department is party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies, responsible for investigating or prosecuting the violation or for enforcing or implementing the statue, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefits; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance or a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on punched cards, magtape, and disc.

RETRIEVABILITY:

By name:

SAFEGUARDS:

Access restricted to authorized persons only from locked storage.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

1. Chief, Branch of Program Management, Eastern Mapping Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 567, Reston, Virginia 22092.

2. Chief, Branch of Program Management, Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1440 Independence Road, Rolla, Missouri 65401.

3. Chief, Branch of Program Management, Rocky Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225.

4. Assistant Chief, Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefied Road, Mail Stop 531, Menlo Park, California 94025.

NOTIFICATION PROCEDURE:

A request for notification shall be addressed to the appropriate System Manager. See 43 CFR 2.60 for submission requirements.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the appropriate System Manager. See 43 CFR 2.63 for submission requirements.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate System Manager. See 43 CFR 2.71 for submission requirements.

RECORD SOURCE CATEGORIES:

Data from work prepared by individuals.

[FR Doc. 90–25560 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–31–M

Geological Survey

Establishing the Closing Date for Transmittal of Application Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1992.

Applications are invited for research projects under the NEHRP.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95–124. (42 U.S.C. 7701, et. seq.)

The purpose of this program is to support research in earthquake hazards and earthquake prediction to provide earth-science data and information essential to mitigate earthquake losses.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State or local governments.

Closing Date for Transmittal of Applications: Applications must be received on or before January 24, 1991.

Program Information: This program supports research related to the following general areas of national interest: (1) Current tectonic and earthquake potential studies—analysis of regional seismic network data, identification of source zone characteristics and earthquake potential estimates; (2) earthquake prediction research—prediction methodology and evaluation, focused earthquake prediction experiments, and theoretical, laboratory and fault zone studies; and (3) regional earthquake hazards assessments—geologic and seismic hazard evalution and synthesis, implementation, loss estimation, and communication.

Application Forms: The program announcement is expected to be available on or about November 15, 1990. You may obtain a copy of announcement 7740 by writing to Mary Burkett, U.S. Geological Survey, Office of Procurement and Contracts—MS 205C, 12201 Sunrise Valley Drive, Reston, VA 22092.

Organizations that applied for a fY 1991 award and organizations that requested to be retained on the mailing list since the last announcement, will be mailed a copy of the program announcement.

Further Information: For further information contact Dr. Elaine Padovani, Deputy Chief, External Research Program, Office of Earthquakes, Volcanoes, and Engineering—MS 905, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston VA 22092. Telephone: 703–648–6722.

(Catalog of Federal Domestic Assistance Number 15.807)

Dated: October 24, 1990.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 90–25585 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project 1076–0121, Washington, DC 20503, telephone 202–395–7340.

Title: Annual Notification of Rights, 25 CFR 43.4.

Abstract: Elementary, secondary, and post-secondary schools funded by the Bureau of Indian Affairs, whether operated under contract or otherwise, are required to give parents and eligible students notice of the types of student records maintained and rights to access.

Bureau Form Number: Not applicable.
Frequency: Annually.
Description of Respondents: Elementary, secondary and postsecondary schools funded by the Bureau of Indian Affairs.
Annual Responses: 84.
Annual Burden Hours: 91.
Bureau Clearance Officer: Gail Sheridan (202) 208–2685.

Joe Christie,

Deputy to the Assistant Secretary—Indian Affairs/Director, (Indian Education Programs).

[FR Doc. 90–25609 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AK–919–01–4830–02–ADVB]

Northern Alaska Advisory Council; Meeting

The Northern Alaska Advisory Council will hold a public meeting November 29, 1990, at BLM's Fairbanks Office Building, 1150 University Avenue, Fairbanks, Alaska. The meeting will begin at 8:30 a.m., public comment will be taken from 1 to 2 p.m., and the meeting will end at 5 p.m.

Topics of discussion will be (1) BLM-Alaska's revised planning schedule, (2) the FY91 budget overview, (3) the Fort Egbert Cultural Resource Management Plan, and (4) subsistence.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: October 23, 1990.

Roger Bolstad,

Designated District Manager.

[FR Doc. 90–25622 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer, Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22074–4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010–0086); Washington, DC 20503, telephone (202) 395–7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 200740–4817.

Title: Subpart P, Sulphur Operations, 30 CFR part 250.
OMB Approval Number: 1010–0086.
Abstract: This information is needed to ascertain the conditions of a drilling site. This is necessary to mitigate the hazards inherent in drilling operations and to increase the margin of safety of personnel and the environment. The information collection requirements are being modified to clarify the information the lessees are required to document concerning blowout preventer tests.
Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Federal Outer Continental Shelf sulphur lessees.
Estimated Completion Time: 6.9 hours.
Annual Responses: 18.
Recordkeeping Hours: 298.
Annual Burden Hours: 422.
Bureau Clearance Officer: Dorothy Christopher, (703) 787–1239.

Dated: September 7, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90–25564 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Prohibition of Same Day Airborne Wolf Hunting in National Preserves in Alaska

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that same day airborne wolf hunting continues to be prohibited by Alaska State regulation and, consequently, by Federal regulation, in national preserves within the State of Alaska.

DATES: The Alaska State prohibition on same day airborne hunting in national preserves has been in effect since March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Paul Haertel, Associate Regional Director, Resource Services, Alaska Regional Office, National Park Service, 2525 Gambell Street, room 107, Anchorage, Alaska 99503; telephone 907/257–2684.

SUPPLEMENTARY INFORMATION: On March 14, 1990, the State of Alaska effectuated regulations providing for same day airborne wolf hunting in certain parts of the State, but specifically stating that such activities were not allowed in national preserves. *See* 5 AAC 92.085(8), Alaska Register 113 (March 14, 1990).

On August 12, 1990, the current State of Alaska same day airborne wolf hunting regulation—5 AAC 92.085(8)—became effective:

5 AAC 92.085. Unlawful Methods of Taking Bag Game; Exceptions

(8) No person who has been airborne may take or assist in taking a big game animal until after 3 a.m. following the day in which the flying occurred; however, this paragraph does not apply to

(A) Taking deer;

(B) Taking wolves under 5 AAC 92.038 during August 10—March 31 in the portions of Units 9, 11, 12, 13 (excluding that portion of Unit 13(E) west of the Parks Highway), 17, 19, 20, 21, 24, 25(B), 25(C), and 25(D) that are not in a national preserve;

(C) A person flying on a regularly scheduled commercial jet aircraft flight;

* * * * *

5 AAC 92.058(8), Alaska Register 115, (October, 1990)

Sport hunting, and hunting for subsistence uses as defined by the Alaska National Interest Lands Conservation Act, are generally allowable in national preserves in Alaska. *See* 16 U.S.C. 410hh–2, 3201; 36 CFR 2.2(b)(1), 13.21(d), and, 13.48. Non-conflicting state laws governing hunting activities are incorporated as a part of applicable National Park Service regulations. *See* 36 CFR 2.2(b)(4), 13.21(d), and 13.48. Hunting in violation of the above stated provisions of 5 AAC 92.085 is also a violation of 36 CFR 2.2(a)(1) which prohibits the taking of wildlife in national park areas except in accordance with applicable state laws.

The Alaska State regulation does not add to or affect the already existing Federal regulatory prohibition on aircraft use related to subsistence hunting in national parks and monuments in Alaska. Certain national parks and monuments in Alaska are only open to hunting for subsistence uses as specified in the Alaska National

Interest Lands Conversation Act. *See* 16 U.S.C. 410hh–2. National Park Service regulations generally prohibit "the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses * * *" 36 CFR 13.45.

Boyd Evison,

Regional Director, Alaska Region, National Park Service.

[FR Doc. 90–25657 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan, John Muir National Historic Site; Availability of Draft Finding of no Significant Impact

SUMMARY: The National Park Service proposes to adopt the proposed General Management Plan, identified as Alternative A in the draft General Management Plan/Environmental Assessment that was made available for public review between June 13 and July 31, 1990. Minor modifications of Alternative A have been made to recognize grazing as a possible tool in vegetation management and to reduce the proposed level of development at the "gravesite tract". A draft Finding of No Significant Impact (FONSI) has been prepared as the final step in adopting the plan.

DATES: Written comments on the draft FONSI will be accepted until November 29, 1990.

ADDRESSES: Requests for copies of the draft FONSI and any written comments should be directed to: Superintendent, John Muir National Historic Site, 4202 Alhambra Ave., Martinez, California 94553.

Dated: October 19, 1990.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 90–25669 Filed 10–29–90; 8:45 a.m.]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 20, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 14, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

Humphrey, John, House, 115 E. Weatogue St., Simsbury vicinity, 90001755

Tolland County

Ellington Center Historic District, Roughly, Maple St. from Berr Ave. to just W of the High School & Main St. from Jobs Hill Rd. to East Green, Ellington, 90001754

LOUISIANA

Rapides Parish

Rapides Lumber Company Sawmill Manager's House, Jct. of US 165 & Castor Plunge Rd., Woodworth, 90001753

West Feliciana Parish

Weyanoke, Sligo Rd., 5 mi. N of jct. with LA 66, Weyanoke vicinity, 90001750

MASSACHUSETTS

Norfolk County

Needham Town Hall Historic District, Great Plain Ave. between Highland Ave. & Chapel St., Needham, 90001756

Suffolk County

Textile District, Roughly, Essex St. from Phillips Sq. to Columbia St. & Chauncy St. from Phillips Sq. to Rowe Pl., Boston, 90001757

TENNESSEE

Hamblen County

Watkins-Witt House, 6622 W. Andrew Johnson Hwy., Talbott vicinity, 90001752

Sevier County

Walker Mill Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee MPS), W Prong, Little Pigeon R. just off US 441, Sevierville vicinity, 90001751

[FR Doc. 90–25659 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the bureau clearance officer and to the Office of Management and Budget, Paper Reduction Project (1006–0001, Washington, DC 20503, telephone 202–395–7340.

Title: Water User Census.

OMB approval number: 1006–0001.

Abstract: Crop census information on all operating Bureau of Reclamation projects is needed as a tool in the administration, management, and evaluation of the Federal Reclamation program. These data are used for economic analysis, program evaluation, and responding to Congressional and other inquiries. Respondents are water users on Bureau of Reclamation projects.

Bureau Form Number: 7–332.

Frequency: Annual.

Description of Respondents: Water users on Bureau of Reclamation projects.

Annual Responses: 22,200.

Annual Burden Hours: 7,400.

Bureau Clearance Officer: Carolyn Hipps—303–236–6769.

Dated: July 27, 1990.

D.W. Webber,

Acting Deputy Commissioner, Bureau of Reclamation.

[FR Doc. 90–25604 Filed 10–29–90; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 27)]

Intrastate Rail Rate Authority; Oregon

AGENCY: Interstate Commerce Commission.

ACTION: Extension of certification.

SUMMARY: By decision served September 24, 1985, the State or Oregon, through the Oregon Public Utility Commissioner, was certified to regulate intrastate rail rates, practices, and procedures for a five-year period ending on October 24, 1990. Pursuant to a request from Oregon, the Commission extends the certification for 180 days so that Oregon can complete modifications of its standards and procedures and prepare an application for recertification in compliance with *State Intrastate Rail Rate Authority*, 5 I.C.C. 2d 680 (1989).

DATES: Oregon's certification is extended for 180 days from October 24, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721].

Decided: October 24, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-25629 Filed 10-29-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA in United States v. American Medical Systems, Inc., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on October 15, 1990, a proposed Consent Decree in *United States* v. *American Medical systems, Inc., et al.* Civil Action No. 90-2203 was lodged with the United States District Court for the Western District of Arkansas.

The Complaint in this enforcement action was filed on October 15, 1990, against under section 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9607, seeking reimbursement of costs incurred by the United States in responding to the release or threat of release of a hazardous substance from the Allen Transformer Site located in Fort Smith, Arkansas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Medical Systems, Inc., et al.* D.J. No. 90-11-3-383.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $17.00 payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25562 Filed 10-29-90; 8:45 am]

BILLING CODE 4410-01-M

Mottolo et al.; Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 22, 1990 a proposed Partial Consent Decree as to Defendant K.J. Quinn & Co., Inc. Regarding Past United States' Response Costs ("Consent Decree") in *United States* v. *Mottolo, et al.*, Civil Action No. 83-547-D, was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree concerns the Mottolo site in Raymond, New Hampshire. The proposed Consent Decree requires defendant K.J. Quinn & Co., Inc. ("Quinn") to pay the United States $1,500,000 plus prejudgment interest from May 1, 1990 until the date of actual payment, in settlement of Quinn's liability for past response costs incurred by the United States through May 1, 1990 relating to the Mottolo site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mottolo, et al.*, D.J. Ref. 90-11-2-17.

The proposed Consent Decreee may be examined at the office of the United States Attorney, District of New Hampshire, 409 Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301 and at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Mass. 02203. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost), payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and National Resources Division.

[FR Doc. 90-25563 Filed 10-29-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/

PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics
Point of Purchase Survey (CPP)—Computer Assisted Telephone Interviewing (CATI)
CPP CATI Feasibility Test Instrument; CPP CATI Advance Letter; Interview 1
One Time Only
Individuals or Housholds
8430 respondents; 3099 hours; 20 minutes per response; no paper forms.

We will use CPP CATI to gather information on the type of outlets at which consumers shop for selected consumer items. CPP data are used to periodically update the Nation's Consumer Price Index (CPI). This phase is a feasibility test to determine if these data can be collected cost-effectively by computer assisted telephone interviewing.

Extension

OSHA
1,2-Dibrom-3-Chloropropane (DBCP)
1218–0101
On Occasion
Business or other for-profit; small business or organizations
Respondents *0*; *1* total hours; *0* hours per response; *0* form

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 1,2-Dibromo-3-Chloropropane (DBCP). The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the DBCP standard. The production of DBCP in the United States is negligible and therefore, the agency is assuming 1 hour burden.

Extension

Mine Safety and Health Administration
Roof Control Plans (30 CFR 75.220, 75.221 and 75.223(b))
1219–0004
Annually
Businesses or other for-profit; Small businesses or organizations
2,179 respondents; 13,259 total burden hours; 6.0096 average hours per response

Falls of roof, face and rib continue to be a leading cause of injuries and death in underground coal mines. All underground coal mine operators would be required to develop and submit roof control plans to MSHA for evaluation and approval. These plans would be evaluated to determine if they are adequate for prevailing mining conditions.

Escapeways and Escape Facilities (30 CFR 75.1704–2)
1219–0052
Weekly
Businesses or other for-profit; Small businesses or organizations
1,979 respondents; 148,029 total burden hours; 74.8 average hours per response

Requires that escapeway routes from underground coal mines be examined in their entirety once each week and that a record be kept of the results of the examination. The records are used to determine that the integrity of the escapeways is being maintained.

Ventilation System and Methane and Dust Control Plan (30 CFR 75.316 and 75.316–1)
1219–0084
On occasion; semi-annually
Businesses or other for-profit; Small businesses or organizations
2,179 respondents; 13,474 total burden hours; 3.2405 average hours per response

Requires coal mine operators to submit a detail ventilation system and methane and dust control plan, including an up-to-date map of the mine, to MSHA for approval. The information is used to ensure that a system is developed and used that will effectively ventilate the mine.

Signed at Washington, DC this 24th day of October, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90–25627 Filed 10–29–90; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

Drug-Free Workplace

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Governmentwide final rules issued by the Office of Management and Budget (OMB), implementing the November 18, 1988, Drug-Free Workplace Act of 1988, require Department of Labor (DOL) grantees and contractors to certify that they will provide drug-free workplaces as a precondition of receiving a grant or contract from DOL. The rules are explained in a Training and Employment Information Notice (TEIN) No. 15–90 issued October 16, 1990, and published at the end of this document. Attachment No. 2 to the TEIN, a **Federal Register** Notice, is not reprinted with this notice.

EFFECTIVE DATE: October 16, 1990.

FOR FURTHER INFORMATION CONTACT: James MacDonald, Division of Debt Management, Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, room N–4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 535–0704.

SUPPLEMENTARY INFORMATION: The final rules for grantees were effective as of July 24, 1990, except for the certification requirement applicable to 29 CFR 98.630 (c) and (d) for States and State agencies which was effective June 25, 1990. The final rules, published May 25, 1990, in the **Federal Register** at 55 FR 21677, are incorporated as an amendment to the governmentwide common rules pertaining to nonprocurement debarment and suspension. The Department of Labor's rules were published on the same date in the **Federal Register** at 55 FR 21696 and codified at 29 CFR part 98. subpart F. The final rules relating to contracts are detailed in amendments to the Federal Acquisition Regulation published May 25, 1990, in the **Federal Register** at 55 FR 21706 and codified at 48 CFR parts 1, 9, 23, 42, and 52. The final rules require grantees to make a drug-free certification as a precondition to the awarding of a grant. Additionally, section B of the drug-free certification requires grantees either to submit to the Grant Office or keep on file for Federal inspection a list of the sites for the performance of work done in connection with the specific grant. A grantee which is a State or State agency may elect to make a single annual certification which would be retained on file in its central office with a copy being submitted for each grant or award. This notice summarizes and announces the issuance of the Training and Employment Information Notice No. 15–90.

Signed at Washington, DC, this sixteenth day of October 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

Training and Employment Information Notice No. 15–90

To: State JTPA Liaisons, State Employment Security Agencies.

From: Roberts T. Jones, Assistant Secretary of Labor.

Subject: Drug-Free Workplace Regulatory Requirements.

1. *Purpose.* To explain the responsibilities of the Employment and Training Administration (ETA) and its grantees under the Drug-Free Workplace Act regulatory requirements. This information notice updates and replaces Training and Employment Information Notice (TEIN) No. 1–89, and transmits a sample certification and the **Federal Register** Notice, Part II, Drug-Free Workplace Requirements; Notice and Final Rules dated May 25, 1990.

2. *References.* Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D; 41 U.S.C. 701 *et seq.*); 29 CFR part 98 (54 FR 4946) and (55 FR 21679); Training and Employment Information Notice (TEIN) No. 21–88; and TEIN No. 1–89.

3. *Background.* On November 18, 1988, Congress enacted the Drug-Free Workplace Act requiring Federal agency contractors and grantees to certify that they will provide a drug-free workplace as a pre-condition of receiving a contract or a grant from a Federal agency after March 18, 1989.

The Office of Management and Budget (OMB) coordinated the participation of over 30 Federal agencies, including the Department of Labor, in the development of regulatory requirements to ensure prompt compliance, prompt issuance of final rules, and uniform government-wide implementation of the Act.

The government-wide rule was issued as an interim final rule, published Tuesday, January 31, 1989, Vol. 54, No. 19 **Federal Register,** and was added as a new subpart F to the Department's nonprocurement debarment and suspension regulations at 29 CFR part 98. As an interim final rule, this regulation was fully in effect and binding after its effective date of March 18, 1989. Comments were solicited.

The government-wide rule was then issued as a final rule, published in the Friday, May 25, 1990, Vol. 55, No. 102 **Federal Register.** This final rule amends the interim final rule in response to public comment. The final rule was effective July 24, 1990, with the exception of an effective date of June 25, 1990 for certification by those States and State agencies that planned to certify under subsections 29 CFR 98.630 (c) and (d).

The Federal Acquisition Regulation (FAR) rules for contracts are contained in the same **Federal Register** notice but are not covered in this information notice which is addressed only to State grantee organizations. The requirements for individuals are not covered for the same reason.

The Drug-Free Workplace common rule for grants amends the government-wide Nonprocurement debarment and suspension common rule at 29 CFR part 98 to allow agencies to make use of existing debarment and suspension remedies as sanctions for non-compliance with the requirements of the Drug-Free Workplace Act. It should be noted that, in contrast to the debarment common rule, the drug-free common rule applies only to prime grantees and does not extend to subgrantees.

These requirements were effective for all grants awarded on or after March 18, 1989 or for grants existing prior to March 18, 1989 if modified "in such a manner that it would be considered a new commitment." Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no cost time extension of such a grant. (See also section No. 6(B)(2) of this TEIN, Frequency of Certification, and section No. 11, Exemptions.)

4. *Definitions Controlled substance* means a controlled substance as it is used in schedules I through V of sections 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15. Neither the regulations nor this TEIN expand upon the definition.

Grant means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. (See also section No. 10 of this TEIN, Coverage, and 29 CFR 98.605(b)(7) for the complete definition.)

Grantee means a person who applies for or receives a grant directly from a Federal agency.

Person is defined in the debarment regulations at 29 CFR 98.105(n) as "any individual, corporation, partnership, association, unit of government or legal entity, however organized * * *."

In the final rule, the definition of "employee" has been made more specific. The term employee includes persons hired by the grantee to manage the program and serve participants but does not include the program participants. Whether or not the person is on the payroll of the grantee is key to this definition. It includes all "direct charge" employees and all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant. It includes temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll, even if not paid from grant funds.

This definition does not include workers not on the payroll of the grantee, such as employees of a subcontractor, even if their physical place of employment is in the grantee's covered workplace.

5. *Requirements.* After March 18, 1989, the ETA is not allowed to award a grant or to modify a grant that involves a new award, unless it has received a certification (or in the case of States, a copy of the certification) that the potential grantee will maintain a drug-free workplace. The ETA Grant Officer must be satisfied that this certification requirement has been fulfilled by the potential grantee prior to making an award.

As a pre-condition to receiving a grant, a potential grantee shall certify to the ETA that it will maintain a drug-free workplace by (*see* 29 CFR part 98 appendix C for the exact text):

(a) Publishing and distributing to each employee a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace, and specifying the action that will be taken against employees for violation of such prohibition.

(b) Establishing an on-going drug-free awareness program to inform employees about (1) The dangers of drug abuse in the workplace, (2) the grantee's drug-free workplace policy, (3) any available drug counseling, rehabilitation, and employee assistance programs, and (4) the penalties for drug-abuse violations occurring in the workplace.

(c) Providing each employee with a statement including language required by (a) above and

(d) Notifying the employee that, as a condition of employment, the employee is to abide by the statement and is to notify the grantee within five calendar days if he or she is convicted for a

violation of a criminal drug statute which occurred in the workplace.

(e) Notifying the Grant Officer in writing within 10 calendar days of receiving notice of any drug violation conviction. Such notifications shall be sent to the appropriate ETA Grant Officer and shall include the identification number(s) of each affected grant and the employee's position title. If the ETA was notified at the time of the violation through the Incident Report system, a supplemental report should be submitted at the time of notice of conviction.

(f) Within 30 calendar days of receiving notice of a conviction, taking one of the following actions, with respect to the employee conviction, (1) A personnel action against the employee up to and including termination (consistent with the requirements of the Rehabilitation Act of 1973), or (2) requiring such employee to participate satisfactorily in a drug-abuse assistance or rehabilitation program. (See the attached regulations and certification for more specific language on all of the above requirements.)

Neither the Act nor the rules authorizes drug testing of employees. On the other hand, drug testing in response to other Federal or State legislation is not prohibited.

6. *Frequency of certification.* Under the interim final rules published January 31, 1989, the certification requirements, especially for States and State agencies, were not clear and were at times confusing. The final rule expands the options available to States and attempts to clarify the requirements.

(A) All grantees, other than States and State agencies, are required to make the drug-free certification for each grant. (The use of the word "State" in this section should be understood to include State agencies unless otherwise indicated.)

(B) A grantee, which is a State, has a number of different options to choose from in order to certify that it will maintain a drug-free workplace (see 29 CFR 98.630).

(1) A State or State agency may always elect to make a drug-free certification for each grant or award. The certification should be submitted to the ETA Grant Officer responsible for making the awards under the grant prior to the award of the grant.

(2) A State or State agency receiving a mandatory formula grant or entitlement that has no application process (no formal application), shall submit a one-time certification in order to continue receiving awards (29 CFR 98.630(b)). This one-time certification agrees to maintain an ongoing drug-free workplace program that continues throughout the life of the grant or as long as the grantee continues to receive the mandatory award. This "one time" certification will only satisfy the requirement for mandatory awards (e.g. JTPA Title II A/B and III Formula grants). A State or State agency, receiving a mandatory formula grant(s), is required to make a one-time certification using the format published in appendix C of the final rule (attached). This certification, using the new format, is required even if the State or State agency has previously submitted an annual certification. This certification need not be repeated in subsequent fiscal years as long as the content of the certification to which the State has certified does not change. The certification should be submitted to the ETA Grant Officer responsible for making the mandatory award(s) under the grant. These "one time" certifications were due July 24, 1990.

A State or State agency which receives a mandatory formula grant and other non-mandatory awards from the DOL will not be able to fulfill all its certification requirements with the "one-time" certification.

(3) The requirements for States and State agencies under the following single annual-certification option are slightly different and so are presented separately.

(A) *Statewide.* A State may elect to make one statewide certification in each Federal fiscal year which would cover all State agencies. The regulations required States to make a certification for FY 1990 by June 30, 1990 (29 CFR 98.630(c)). States which have made a certification in FY 1990 under the Interim Final Rule are not required to re-certify for FY 1990.

For FY 1991 and all subsequent fiscal years, each State electing the single annual Federal fiscal year option shall sign a statewide certification prior to the beginning of the subject fiscal year in order to submit a copy of the certification with applications for grants that run concurrently with or during the fiscal year. Certifications are to be signed by the Governor or by a State official authorized to commit the State and its agencies to the requirements of the Drug-Free Workplace regulations. The certification shall follow the format published in appendix C of the final rule (attached). The original of the certification itself is to be retained in the Governor's office. A copy of the certification must be submitted to the ETA Grant Officer responsible for making the awards under each grant prior to the discretionary award.

The interim final rule permitted grantees to submit one annual certification to a central DOL location. The final rule, however, requires the submission of a copy of the annual certification be submitted individually with respect to each grant, *unless* the Federal agency designates a central location for submission. The DOL and the ETA have decided *not* to designate a central location for submission. Therefore, States are to submit copies of the certification to the appropriate ETA Grant Officer prior to the award.

The Governor of a State may exclude certain state agencies from the statewide certification and authorize those agencies to submit their own certifications to Federal agencies. The statewide certifications shall name any State agencies so excluded.

(B) *State agencywide.* A State agency to which the statewide certification does not apply or a State agency in a State that does not have a statewide certification, may elect to make one agencywide certification in each Federal fiscal year.

The regulations required State agencies to make a Drug-Free Workplace certification for FY 1990 by June 30, 1990. State agencies which have made a certification in FY 1990 under the Interim Final Rule are not required to re-certify for FY 1990.

For FY 1991 and all subsequent fiscal years, each State agency electing the single annual Federal fiscal year option shall sign the agencywide certification prior to the beginning of the subject fiscal year in order to submit a copy of the certification with applications for grants that run concurrently with or during the fiscal year.

Certifications are to be signed by a State official authorized to commit the agency to the requirements of the Drug-Free Workplace regulations. Certifications shall follow the format published in appendix C of the final rule (attached). The certification itself is to be retained in the central office of the State agency. A copy of the certification must be submitted to the Grant Office responsible for making the awards under each grant prior to the award. (The DOL and the ETA have decided *not* to designate a central location for submission. See (3)(A) above.)

7. *Listing of worksites.* Federal agencies in order to audit grantee compliance, must have access to the addresses or locations of workplaces to which Drug-free Workplace requirements apply. The final rule amended the listing of workplace requirements so that grantees may elect one of three available options.

Grantees shall: (1) List the locations of workplaces on the certification document; or (2) list the locations of workplaces on the grant application or submit a separate list of workplaces prior to the award, if there is no application; or (3) maintain a list of workplace on file and available for inspection by Federal agencies in the office of the Governor or State agency. The list of worksites is to be updated annually at the time of certification or on the anniversary of the certification, for those grantees with a one-time certification. These lists must identify the street address or location of the workplace(s) in those instances in which work is to be performed at specific sites. In other situations, it may be necessary to use a categorical identification instead of specific sites.

The common rule defines, in relevant part, Drug-free workplace as a "site for the performance of work done in connection with a specific grant * * *" (29 CFR 98.605(b)(4)). In the preamble to the interim common rule, it stated that the term "site for the performance of work" is taken directly from the statute and it is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification—amended by the final rule to certification, application, or in a list on file with the grantee.

In determining the number of "site(s) for performance of work," to be listed, it should be noted that only the "prime grantee," and not "subgrantees," are covered by requirements under this subpart. Although not specifically addressing the number of site to be listed, the preamble to the interim final rule stated that, if a Federal agency provides financial assistance to a State agency, which in turn passes through the assistance to several local agencies, only the State agency that receives the assistance directly from the Federal agency receives the "grant." Consequently, it is only the State agency that is required to make a drug-Free workplace certification under the regulation (Section by Section Analysis—54 FR 4948).

Again, emphasizing the limits of the requirements, the preamble to the interim final rule states that only "prime grantees" and not "subgrantees" are covered by requirements under the new subpart F (Section by Section Analysis—54 FR 4949).

8. *Grounds for suspension, termination or debarment.* Grantees determined to be in violation of any of the following will be subject to the imposition of sanctions set forth in the Act:

(a) Submission of a false certification;

(b) Failure to comply with the requirements of the certification; and

(c) Failure by the grantee to make a good faith effort to maintain a drug-free workplace. Lack of a good faith effort would be indicated by such a number of the grantee's employees having been convicted under criminal drug statutes for violations occurring in the workplace. Circumstances of grantees vary widely so that the actual number of violations will be determined on a case by case basis.

The preamble to the interim final rule specifically states that criminal drug violations by employees not occurring in the workplace are not grounds for a sanction. Likewise, evidence of drug abuse by employees in the workplace that does not result in a criminal conviction is not a ground for a sanction.

9. *Sanctions.* Sanctions set forth in the Drug-Free Workplace Requirements include: (a) Suspension (i.e., withholding) of payments under the grant; (b) Suspension or termination of the grant; and (c) Suspension or debarment of the grantee. The decision of which sanction or sanctions to apply in a particular case is left to the discretion of the Federal grantor agency. In determining the level of organization at which a sanction should be imposed in case of a violation of the certification requirements, the regulation, where appropriate, focuses on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receive grants from a Federal agency, and one of the State organizational units violates a requirement of the regulation, sanctions should be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire organization could be subject to sanctions.

If the third sanction, debarment, is exercised, the debarred grantee is ineligible for the award of any grant from any Federal agency for a period, to be specified in the final decision, not to exceed five years. The rules include a provision which allows the agency head to issue a written waiver of any of these sanctions, if the agency head determines that such a waiver would be in the public interest. The determination of the "public interest" is within the discretion of the agency head (i.e., in the DOL, the Secretary of Labor) and this waiver authority may not be delegated.

The review and administrative appeal available to grantees can be found in the debarment procedures at 29 CFR 98.310. The debarment regulations at 29 CFR 98.200 state that debarment or suspension does not affect a person's (organization's) eligibility for statutory entitlements or mandatory awards. * * *

10. *Coverage.* For the purpose of the Drug-Free Workplace Act, grants include block grants and entitlement grant programs, whether or not they are exempted from coverage under the grants management common rule (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments). Subgrantees are not required to make a drug-free workplace certification under the regulation.

11. *Exemptions.* Exemptions include grants providing technical assistance in the form of in-kind services; other assistance in the form of loans, loan guarantees, interest subsidies, insurance; direct appropriations; and any veterans' benefits to individuals. Current grantees, whose grants were approved and awarded prior to March 18, 1989, are not required to make certifications in order to continue receiving payments under existing grants. Grantees are not required to make a certification prior to a no-cost time extension of an existing grant.

12. *Costs.* A grantee's costs incurred specifically to comply with these requirements are allowable costs under the grant, provided that the costs meet the usual criteria for allowability. Grantees are not required by the common rule to provide or pay for rehabilitation programs.

13. *Effective date.* This Training and Employment Information Notice shall be effective as of the date of issuance.

14. *Rescission.* Training and Employment Information Notice No. 1–89.

15. *Inquiries.* Questions concerning this information notice should be directed to James MacDonald on (202) 535–0704. Grantees may also contact their respective ETA Grant Officers regarding specific certification questions.

16. *Attachments* (1) **Federal Register** Notice—"Drug-Free Workplace Requirements; Notice and Final Rules," and (2) Sample certification format.

Instructions For The Attached

(Source: **Federal Register** Vol. 55, No. 102, Friday, May 25, 1990)

Please read the instructions carefully. By signing the accompanying document, the grantee is providing the assurance that it will fulfill the requirements set forth by the Drug-Free Workplace Act of 1988 and its implementing regulations codified at 29 CFR Part 98 subpart F.

The certification set out below is a material representation of fact upon which reliance is placed when the Federal agency awards the grant. If it is determined that the grantee knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the Employment and Training Administration (ETA), in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

Workplaces under grants need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and available for Federal inspection. Failure to identify all known workplace constitutes a violation of the grantee's drug-free workplace requirements. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g. all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). If the workplace identified by the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplace in question. Definitions of terms in the NonProcurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.* volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll or employees of subrecipients or subcontractors in covered workplaces).

(Sample format)

Drug-Free Workplace Requirements Certification

Alternate I. (Grantees Other Than Individuals)

Pursuant to the The Drug-Free Workplace Act of 1988, and its implementing regulations codified at 29 CFR Part 98, subpart F, I, _____, the undersigned, in representation of _____ the grantee, *attest and certify* that the grantee will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) The grantee's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

4. Notifying the employee in the statement by paragraph (1) that, as a condition of employment under the grant, the employee will:

(a) Abide by the terms of the statement; and

(b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the agency in writing ten calendar days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. We will provide such notice of convicted employees, including position title, to every grant officer on whose grant activity the convicted employee was working. The notice shall include the identification number(s) of each affected grant.

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (4)(b), with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5) and (6).

8. Notwithstanding it is not required to provide the workplace addresses under the grant, as of today the specific sites are known and we have decided to provide the specific addresses with the understanding that if any of the identified places change during the performance of the grant, we will inform the agency of the changes. The following are the sites for the performance of work done in connection with the specific grant including street address, city, county, state, and zip code:

_____

_____

_____

_____

Check ( ) if there are workplaces on file that are not identified here.

Check ( ) if an additional page was required for the listing of the workplaces.

I declare, under penalty of perjury under the laws of the United States, and under the penalties set forth by the Drug-Free Workplace Act of 1988, that this certification is true and correct.

_____

Signature (Typed Name and Title)

I, _____ (Signer Name), certify that I am the _____ (Official Title) of _____(Grantee Name), the grantee; that I who sign this Drug-Free workplace certification on behalf of the grantee, do so by the authority given by _____ (Source of Authority), and such signing is within the scope of my power.

Executed on: _____ (Authorized Signature)

[FR Doc. 90-25626 Filed 10-29-90; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-7764]

Proposed Exemption for Certain Transactions Involving Aetna Life Insurance Company (Aetna) Located in Hartford, Connecticut

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts managed by Aetna and its insurance company affiliates, including the Aetna general account and the general accounts of Aetna's affiliates which are insurance companies licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which Aetna is a fiduciary. As an aknowledged investment manager and fiduciary, Aetna is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

DATES: Written comments and request for the public hearing must be received by the Department on or before December 31, 1990.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application Nos. D-7764, D-7765 and D-7766. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by Aetna pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemption of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Aetna is organized under the laws of Connecticut. Among the many insurance products and financial services Aetna offers are funding, asset management and other services for thousands of employee benefit plans subject to the provision of Title I of the Act. Aetna has substantial experience in managing real estate investments. Aetna is a wholly-owned subsidiary of Aetna Life and Casualty Company. Of the more than $24 billion in real estate assets managed by Aetna and its affiliates at year-end 1987, Aetna's general account and those of its affiliates held $19.6 billion in real estate mortgage loans and $800 million in real estate equity positions. Aetna's various separate accounts held more than $3.5 billion in equity and participating mortgages at year-end 1987.

2. Aetna maintains many Pooled Accounts in which pension, profit sharing and thrift plans participate. Aetna also has several single customer accounts and investment advisory accounts for which Aetna manages the assets of several large plans. A number of these accounts (the ERISA-Covered Accounts) may participate in the sharing of real estate investments. These include Aetna's open-end separate accounts, its closed-end accounts, and various of its real estate single customer accounts and investment advisory accounts. In addition, Aetna's general accounts and the general accounts of one or more of Aetna's affiliates which are insurance companies licensed to do business in at least one of the fifty states, accounts maintained for overseas clients, limited partnerships and other non-plan investors, and other pooled and single customer accounts that may be formed in the future (collectively, the Accounts), may also participate in the sharing of real estate investments. The Accounts all have portfolio managers who are officers of Aetna. These portfolio managers are responsible for the investments of the Accounts.

3. Aetna's general real estate investment strategy is set by its senior management. Within these pre-determined parameters, its real estate acquisitions and underwriting professionals seek quality real estate investments for its various accounts. These potential equity investments are evaluated through a team approach. An acquisition specialist heads the team, which includes an asset manager, an attorney, an accountant, an engineer, an economic researcher, a risk management specialist, and a construction lending specialist. Each member of the team must sign off on the investment before it is presented for approval to Aetna's real estate mortgage or equity committee. Once this approval has been granted, larger investments must be presented to Aetna's real estate investment committee (the Investment Committee). The Investment Committee, which consists of seven vice presidents of Aetna, must approve all residential/commercial mortgage loan packages in excess of $35 million and all equity investments in excess of $20 million. Approval of the investment requires a concurrence of at least two-thirds of the members of the Investment Committee voting. All equity, land purchase-leaseback participating mortgages or mortgage investments in excess of $40 million must also be approved by Aetna's chairman, vice chairman, president, executive vice president or senior vice president of investments. Any real estate investment above $50 million must be individually reviewed and approved by the Finance Committee of the Board of Directors of Aetna.

4. Aetna represents that it has procedures in place which provide a system of fair and equitable allocation of investments to the separate accounts and the General Account. Each account has written predetermined investment volume objectives. These objectives and defined investment guidelines (such as product mix and geographic diversification standards) are generally established for at least a one-year period. However, they may be modified by the account's portfolio manager if appropriate.

An investment whose size or other characteristics qualify it for only one account will be allocated to that account. An investment whose size and other characteristics qualify it for allocation to more than one account will be allocated to the eligible account with the greatest percentage of its investment funding objective that is unfilled. Investments of a size exceeding eligible account capacities may be shared.

5. Aetna seeks to make investments in real estate on a shared basis for those accounts which it manages. Aetna represents that an inherent advantage of shared investments in real estate is the opportunity to enhance the diversity of investments available to the accounts and their participating plans. By investing on a shared basis, the accounts can obtain the advantage of interests in a larger number of high quality properties, regardless of cost. Further, shared investments frequently result in substantial savings associated with administrative and start-up costs.

6. Aetna frequently structures investments as partnerships, in which a third party (usually a real estate developer) participates in partnership with Aetna. Aetna may then allocate its interest to more than one account. Partnership investments typically involve several particular features (by virtue of the terms and conditions of their partnership agreements) that may, in the case of shared investments, result in possible violations of section 406(a) or (b) of the Act. Therefore, an exemption for such partnerships is necessary.

7. During the course of Aetna's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When Aetna shares these investments among more than one Account, a potential for conflict arises since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a framework of proposed safeguards to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts.

8. Each plan contractholder participating in an ERISA-Covered Account that shares or proposes to share real estate investments must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to Aetna's involvement in such transactions and which are the subject of this proposed exemption. This description must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must also disclose the principles and procedures to be used to resolve anticipated impasses, as will be outlined below. In addition, each contractholder in an ERISA-Covered Account that currently shares investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted.

9. With respect to new contractholders in an ERISA-Covered Account that currently participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. With respect to contractholders who are already in an ERISA-Covered Account that proposes to participate in the sharing of investments in the future, each such contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted before the Account begins to participate in the sharing of investments.

Withdrawals from pooled, open-end Accounts are made, at the written request of the plan, at market value, subject to the availability of cash. Aetna is not obligated to liquidate investments to meet withdrawal requests. If cash available for withdrawals is insufficient to meet all the withdrawal requests on any valuation date, available cash is paid to each customer on a pro rata basis. With respect to closed-end Accounts, the actual cash flow, including amounts received from the sale of investments, is paid out until all assets of the Account have been liquidated. Prior to liquidation of the Account, contractholders have the right, subject to Aetna's agreement which cannot be unreasonably withheld, to sell their interests in the Account. For single customer Accounts, the contractholder with respect to wholly-owned properties can cause Aetna to liquidate the investment or transfer it to a successor investment manager.

10. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by Aetna regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occuring subsequent to the allocation which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointment. Aetna shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.[1]

11. The independent fiduciary must be unrelated to Aetna or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of Aetna, or be affiliated in any way with Aetna or any of its affiliates. The independent fiduciary must be either (1) a business organization which has at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an

[1] For example, in the case of an investment shared by the General Account and an ERISA-Covered Account, if the independent fiduciary of the ERISA-Covered Account determined, after its review of the account's shared investment portfolio and financial information relating thereto, that the ERISA-Covered Account's interest in the shared investment should be disposed of, Aetna would be required to carry out the decision of the independent fiduciary. If the portfolio manager of the General Account agreed that its interest in the shared investment should also be disposed of, then Aetna would sell the entire shared investment. If the portfolio manager of the General Account did not agree that its interest in the shared investment should be sold, Aetna would first try to sell only the ERISA-Covered Account's interest in the shared investment. However, to the extent that it is not feasible or possible to sell the ERISA-Covered Account's interest alone, the entire shared investment would be sold notwithstanding the non acquiescence of the General Account.

ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include services rendered to the Accounts as independent fiduciary under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) acquire any property from, sell any property to, or borrow any funds from, Aetna, its affiliates, or any Account managed by Aetna or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A plan sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

12. In the case of a single customer EIRSA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by Aetna. The independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of a closed-end pooled ERISA-Covered Account, the appropriate plan fiduciary of each participating plan will be required to approve the initial selection of the independent fiduciary proposed by Aetna prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of an open-end pooled ERISA-Covered Account, the independent fiduciary or the independent fiduciary committee will be selected initially by Aetna. The applicant represents that because these Accounts often include a significant number of plan contractholders, the independent fiduciary will not be approved initially by plan contractholders. The selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such an Account within twelve months after the selection has been made.

13. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. In the case of any biographical information furnished after the date of this proposed exemption, the information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from Aetna or an Aetna affiliate during the preceding year, incluidng pension or other deferred compensation paid to fiduciaries who may be former employees of Aetna, and compensation for any business services performed by the fiduciary or any affiliate for Aetna or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve Aetna's initial selection of the fiduciary committee and whether to continue such approval each year thereafter.[2]

14. Once and independent fiduciary is appointed, the independent fiduciary will continue to serve subject to an annual nomination by Aetna and vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary may be removed by a majority vote of the Account's contractholders. Aetna will not have the authority to remove an independent fiduciary during the term of that independent fiduciary. If a vacancy occurs by virtue of the death, resignation or removal of an independent fiduciary, a replacement independent fiduciary will be nominated by Aetna and approved by a majority vote of the Account's contractholders. Possible replacements may also be nominated by any of the Account's contractholders.

15. The independent fiduciary will normally be compensated by the ERISA-Covered Account. However, upon advance notice to the independent fiduciary and to the Account's contractholders, Aetna (or the Plan Sponsor in the case of a Single Customer Account) may pay such fees itself. Aetna will indemnify any independent fiduciary or members of an independent fiduciary committee with respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the State of Connecticut and subject to the requirement that such person acted in good faith and in a manner he or it reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

16. The independent fiduciary will record in writing all decisions made by him or it in such capacity. In addition to such decisions of such independent fiduciary, the rationale and support thereof must also be set forth in writing and maintained by Aetna pursuant to the recordkeeping requirements outlined in the General Conditions below. An independent fiduciary committee will be required to make its decisions on the basis of a two-thirds majority.

17. The independent fiduciary of each ERISA-Covered Account is required to approve any recommendation by Aetna involving a shared investment. Situations may arise where a conflict of interest may develop and the independent fiduciaries of the ERISA-Covered Accounts may not agree on what the appropriate course of action should be with respect to a proposed transaction. In such cases, Aetna will make recommendations, which may be outlined as alternatives, to the independent fiduciaries regarding the proposed transaction. If an alternative couse of action is not found that is acceptable and the independent fiduciaries of such Accounts are in effect stalemated, a procedure has been

[2] Aetna represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts.

developed by Aetna to ensure that a decision can be made.

18. This stalemate procedure is designed to provide a result that is the same as would be followed in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action that will be taken in such cases is the one that does not require an ERISA-Covered Account to invest new money and will not change the terms of an existing agreement or the existing relationship between the Accounts. For example, in the case of a proposed modification to a debt investment shared by two ERISA-Covered Accounts, if the independent fiduciaries cannot agree on such modification, no modification will be made. Rather, the terms of the loan agreement, as originally stated, will be carried out. Or, in the case of a partnership interest shared by two ERISA-Covered Accounts, the exercise of a buy-sell provision in the partnership agreement by a co-partner will require the two ERISA-Covered Accounts which share Aetna's interest in the partnership to either sell their partnership interest to the co-partner at a stated price, as determined by the partnership agreement, or buy the co-partner's interest at the stated price. If the independent fiduciaries cannot agree on the action to be taken and no alternative course of action is found to be acceptable, the ERISA-Covered Accounts will be required to sell their interest to the co-partner. This action would be taken because the other (purchase) option would require the expenditure of additional funds by an objecting Account.

In addition, situations may arise where an ERISA-Covered Account and a non-ERISA-Covered Account (other than the General Account) wish to pursue different courses of action. In such situations the decision on behalf of the non-ERISA-Covered Account will be made by persons independent of Aetna and its affiliates.[3]

Specific Transactions

I. Direct Real Estate Investments

(a) *Transfers between Accounts.* 19. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the "selling" Account to sell its interest in the shared investment of the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. Where two or more separate accounts are involved in such a transfer, the transfer would also be subject to the approval of the Connecticut Insurance Department. In addition, Aetna has determined that no such transfers will be permitted between the General Account and an ERISA-Covered Account. Because Aetna would be acting on behalf of both the "buying" and "selling" Accounts in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406 of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which Aetna is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer. See Section I(a).

(b) *Joint Sales of Property.* 20. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined for all of the participating Accounts that the sale is desirable. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[4] Similarly, Aetna may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. See section I(b).

(c) *Additional Capital Contributions.* 21. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by Aetna on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment; [5] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one of more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be

[3] In this regard, Aetna represents that persons independent of Aetna and its affiliates will make the decisions on behalf of non-ERISA-Covered Accounts pursuant to Section I(e)(2) and Sections II (b)(2), (c)(2) (d)(2) of the proposed exemption.

[4] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

[5] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always contribute at least its pro rata share of such capital.

derived from the property.[6] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See section I(c).

(d) *Leading of Funds to Meet Additional Capital Requirements.* 22. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See section I(d).

(e) *Shared Debt Investments.* 23. Aetna occasionally makes real estate investments consisting of interim construction loans or medium or long-term mortgage loans on a property. In some intances, Aetna may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of Aetna. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) A material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the terms of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided by others, and the provision of additional financing to the borrower by Aetna. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decison must be made on behalf of each Account with respect to the action to be taken when a loan modification on loan default situation occurs. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since Aetna manages each of these Accounts, the action it decides to take for the particularly Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit Aetna on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan, or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts, or with respect to the acquisition of additional debt. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account and Aetna or the client for each non-ERISA-Covered Account. If there is an agreement among the independent fiduciaries and the non-ERISA-Covered Accounts as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries and the non-ERISA-Covered Accounts, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. With respect to shared debt investments involving ERISA-Covered Accounts and non-ERISA-Covered Accounts (other than the General Account), decisions on behalf of the non-ERISA-Covered Accounts will be made by persons independent of Aetna and its affiliates. See Section I(e).

II. Partnership Investments

24. Many real estate investments are structured as partnership arrangements (rather than 100 percent ownership interest in property) in which Aetna and another party, such as a real estate developer or manager, participate as co-partners. Generally, Aetna's co-partner acts as managing partner of the joint venture. Aetna, in turn, may allocate its interest in the partnership to more than one Aetna account. Partnership investments typically involve several particular features by virtue of the terms and conditions of the partnership agreements that may, when Aetna's partnership interest is shared, result in possible violations of section 406 of the Act.

(a) *Additional Capital Contributions to Joint Ventures.* 25. As in the case of investments made entirely by Aetna, partnership real estate investments sometimes require additional operating capital. Typically, the partnership agreements entered into by Aetna and many other real estate investors provide for a capital call by the general partner of the partnership to be made to each partner and that each partner provide the needed capital on a pro rate basis either in the form of an equity contribution or a loan to the partnership. In one partner refuses to contribute its pro rata equity share of the capital call, the other partner(s) may contribute additional capital to cover the short-fall and thereby "squeeze down" the interst in the venture of the non-contributing partner.[7] Alternatively, if sufficient

[6] In the case of shared real estate investments owned entirely by Aetna accounts, if an Account contributes capital equalling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

[7] In the case of a call for additional capital invovling a typical partnership arrangement entered into between parties dealing at arm's-length, the partnership agreement may commonly provided that the equity interest of any non-contributing partner be re-adjusted, or "squeezed down", on a capital interest basis. This invovles re-adjusting the equity interests of the partners solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This "capital interest" adjustment can substantially diminish the equity interest of the non-contributing partner in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all partners to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other partners.

additional capital is not provided by the partners, other financing may be sought, or the partnership may be liquidated. In the case of a capital call where Aetna's partnership interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the partnership. The general rule that Aetna will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of Aetna's partnership interest may not be in a position to provide their share of a capital call, other situations may arise where a partner is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

26. *Aetna Shortfall.* In situations where the General Account and an ERISA-Covered Account are sharing an investment in a partnership, the General Account and an ERISA-Covered Account may experience a capital call from the general partner of the partnership for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[8] the General Account may make an additional equity contribution to the partnership to cover the ERISA-Covered Account's shortfall. However, in any case where the General Account contributes an ERISA-Covered Account's shortfall, the ERISA-Covered Account's share of the partnership interest will be readjusted and reduced based upon the change in the fair market value of the partnership interest held by Aetna which is caused by the infusion of new capital, thus recognizing any appreciation in the investment. There is no "capital basis squeeze down" effect under these circumstances as there might be under the partnership agreement should Aetna (in its role as a partner) fail to meet a call for additional capital. See section II(a)(1). Additionally, the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In this way, the needed capital may be provided without causing a "squeeze down" in the equity interest of the participating ERISA-Covered Account. A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA Covered Account, other than the General Account, participate in a partnership investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account (but not the General Account) may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts (other than the General Account) might result in a violation of section 406(b)(2) of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides limited relief for these disproportionate contributions.

27. *Co-Partner Shortfall.* In some cases, Aetna's partner in a partnership investment may be unable to meet its additional capital obligation, and Aetna may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of Aetna's Accounts in the partnership in order to finance the operation of the property (and thereby squeeze down the equity interest of the partner).[9] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a non-proportionate basis if the need arises. Any instance involving the infusion of additional capital to a partnership will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a partner on the basis provided in the partnership agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) *Third Party Purchase of Partnership Properties.* 28. Under the terms of certain partnership agreements entered into by Aetna and other real estate investors, if an offer is received from a third party to purchase the assets of the partnership, and one partner (irrespective of the percentage ownership interest of the partner) wishes to accept the offer the other partner must either (1) Also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the partnership. For example, if Aetna on behalf of the Accounts and a real estate developer are partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, Aetna on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the partnership. When Aetna's interest in a real estate partnership is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Acounts to reject the offer and buy-out the partner,

[8] In any case where the General Account and one or more ERISA-Covered Accounts share Aetna's interest in a partnership, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account (but not higher than the General Account's pro rata share of the required additional capital except, as described in paragraph 27, in the event of a co-venturer shortfall). Thus, the General Account will never be the cause as between the Accounts of a capital contribution shortfall by Aetna that would result in a capital basis squeeze down by a partner.

[9] In any case involving a shared partnership interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital the General Account would also contribute at least its pro rata share of such capital.

while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The partnership agreements typically require, however, that Aetna on behalf of the Accounts provide its co-partner with a buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, Aetna might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able itself to buy-out not only the co-partner, but also the other participating Account(s) that wishes to accept the third party offer to sell. The General Account, however, will not participate in the buy-out of another Account(s). Or, one Account may itself be willing and able to buy-out the co-partner while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit Aetna to respond to third-party property purchase offers as appropriate under the circumstances. Such a reponse might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a partner by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-partner) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account. Further, in any case involving the sharing of a partnership interest between the General Account and an ERISA-Covered Account, Aetna has determined that the action taken by the General Account in such third-party purchase offer situations will not be inconsistent with the action approved for the ERISA-Covered Account by the independent fiduciary for such Account. For example, where Aetna recommends that a third-party purchase offer be accepted and the independent fiduciary nevertheless determines that the interest of the co-partner should be bought out, both Accounts will buy out the interest of the co-partner on a proportionate basis, unless a disproportionate buy-out is agreeable to both Aetna and the independent fiduciary. However, where an offer to sell is acceptable to the co-partner (and Aetna has the option of seling to the third party or buying out the co-partner) and it is determined that the General Account is willing and able alone to buy out the co-partner's interest, the independent fiduciary may elect that the ERISA-Covered Account retain its existing ownership interest. In such case, the General Account may buy out the co-partner pursuant to section II(b)(1). In any case in which more than one ERISA-Covered Acocunt participates in a shared partnership investment and there is a lack of agreement among the independent fiduciaries with respect to whether to accept a "sell" offer or to buy-out a co-partner, Aetna, as indicated above, must nevertheless provide a unified response to the co-partner on behalf of all participating Accounts. Accordingly, in these instances, all participating Accounts will be required to accept the "sell" offer, unless the Account or Accounts that prefer the buy-out can buy-out both the co-partner's and the "selling" Account's interest, or unless one Account elects to retain its original ownership interest while the other Acocunt(s) alone buys out the co-partner's interest. The applicant represents that this action is preferred because the purchase option would require the expenditure of additional funds by an objecting Account.[10] See Section II(b).

(c) *Rights of First Refusal in Partnership Agreements.* 29. Under the terms of certain partnership agreements entered into by Aetna and other real estate investors, if a partner wishes to sell its interest in the partnership to a third party, the other partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Aetna and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Aetna would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate partnerships, the decision by Aetna on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the partnership agreement, only one option (exercise or not exercise) may be chosen by Aetna on behalf of the Accounts, exemptive relief is being requested that would permit Aetna to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a partnership investment, even though Aetna may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other partner's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a shared partnership interest and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the partner will be permitted to sell its interest to the third party, unless one Account decides to buy-out the partner alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-partner without other participating Accounts taking part in the transaction. For example, in the case of a shared partnership investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the co-partner wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the account participate in purchasing that partner's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

[10] Similarly, in any cse involving an ERISA-Covered Account and a non-ERISA-Covered Account, if there is a lack of agreement between the independent fiduciary and, for example, the trustees of a foreign or public plan (or Aetna in the case of a discretionary non-ERISA-Covered Account), all participating Accounts will be required to accept the "sell" offer unless an alternative accommodation as described above is made.

(d) *Buy-Sell Provisions in Partnership Agreements.* 30. Certain partnership agreements entered into by Aetna may provide that one partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the partnership agreement or buy out the interest of the first partner at such price. If the other partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a partnership, but generally a partnership agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by Aetna on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-partner, may affect various participating Accounts differently. Accordingly, any decision made by Aetna in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit Aetna to make an appropriate decision under the circumstances on behalf of all participating Accounts to make buy-sell offer to a co-partner or to react to a buy-sell offer from a co-partner. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment. Further, under the requested exemption, if Aetna decides to exercise (i.e., initiate) a buy-sell option with repsect to the co-partner's interest and the indedpendednt fiduciary of a participating ERISA-Covered Account objects, the buy-sell option will not be exercised. Similarly, if the buy-sell option is initated by the co-partner and there is a split among the independent fiduciaries of participating ERISA-Covered Accounts with respect to whether to buy or sell, all such Accounts will be required to sell, unless the Account(s) that wishes to buy-out the co-partner (or the co-partner and the other participating Account) can do so without the participation of the other Accounts. Also, where a buy-sell option is initiated by the co-partner and Aetna determines that the General Account should purchase the co-partner's interest, if the independent fiduciary of a participating ERISA-Covered Account determines that, as between "buy" or "sell", such Account's interest should be sold, Aetna's entire partnership interest will be sold unless the independent fiduciary agrees that it would be preferable for the ERISA-Covered Account to retain its share of the partnership interest and Aetna determines that the General Account is willing and able to purchase the entire interest of the co-partner. Any such disproportionate purchases may, however, also raise questions under section 406 of the Act. See section II(d).

(e) *Transactions with Partnership Party in Interest.* 31. The applicant represents that when the General Account holds a 50 percent or more interest in a partnership, the partnership itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the partnership and a separate account or investment advisory account that is also participating in the partnership (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the partnership itself) in violation of section 406. Also, as a result of the partnership becoming a party in interest under section 3(14)(G) of the Act, other partners in the partnership having a ten percent or more interest may be parties in interest under section 3(14)(I). Therefore, transactions such as buy-outs, sales of property, leases, etc., may occur which involve possible violations of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) Any additional equity or debt capital contributions to a partnership by an ERISA-Covered Account which is participating in an interet in the partnership, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such partnership; (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender; or (3) other transactions with the co-partners which arise in connection with the operation of the partnership. Any such action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. In addition, the transactions would be conducted on a totally arm's-length basis, and the party in interest involved would have no power or authority to influence any of the transactions engaged in by Aetna on behalf of any of the Accounts managed by Aetna. See section III.

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Initial Proportionate Allocations

Pending review by the Department of the investment structure and post-initial allocation transactions described in this notice, the applicant, Aetna, has not requested exemptive relief for the initial allocation of shared real estate investments by Aetna among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more accounts maintained by Aetna (which may include both the General Account and one or more ERISA Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406 (b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406 (b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on

identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of [or represent] a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[11]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by Aetna does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which are engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Aetna, of the notice of proposed exemption as published in the **Federal Register** to the plan sponsor of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a tranaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Acounts Managed by Aetna

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared partnership interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared partnership interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions.*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply either to the making of a proportionate equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate (as defined in section V(e)) equity capital contribution (or the failure to make such additional contribution) by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on

[11] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(d) *Lending of Funds*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna on behalf of one or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved such modification or has not approved the exercise of such rights and (3) the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the proportionate acquisition of additional debt by one or more of the Accounts to a shared debt investment, or to the acquisition of Disproportionate additional debt (or the failure to acquire such additional debt) by one or more of such Accounts which results in an adjustment in the amount of debt held by the Accounts in the shared investment provided that each ERISA-Covered Account is given an opportunity to acquire additional debt on a proportionate basis.

Section II—Exemption for Certain Transactions Involving the Management of Partnership Interests Shared by Two or More Accounts Managed by Aetna

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate partnership between two or more Accounts, if the conditions set forth in section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of additional proportionate equity capital contributions by one or more Accounts participating in the partnership; or to the making of Disproportionate (as defined section V(e)) equity capital contributions by one or more of such Accounts which results in an adjustment in the equity ownership interest of the Accounts in the shared partnership investment on the basis of the fair market value of such interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to make a proportionate contribution.

(2) The restrictions of section 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional proportionate capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) to the partnership by Accounts other than the General Account which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the partnership on the basis of the fair market value of such partnership interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-partner fails to provide all or any part of its proportionate share of an additional equity capital contribution, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the partnership by an Account up to the amount of such contribution not provided by the co-partner which result in an adjustment in the equity ownership interests of the Accounts in the partnership on the basis provided in the partnership agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the partnership, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account(s), on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Aetna on behalf of two or more Accounts, including one or more ERISA-Covered Account(s), of an offer by a third party to purchase a property owned by the partnership even though the independent fiduciary for one or more of such ERISA-Covered Account(s) has not approved the acceptance of the offer (where all of the Accounts (other than the General Account) participating in such investment are not in agreement

on how to proceed with respect to such offer), provided that the declining Accounts(s) are first afforded the opportunity to buy out both the co-partner and "selling" Accounts's interests in the partnership.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a partnership agreement to purchase a co-partner's interest in the partnership at the price offered for such interest by a third party, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account(s), on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna on behalf of the ERISA-Covered Accounts not to exercise such a right of first refusal even though the independent fiduciary for one or more of such ERISA-Covered Accounts has approved the exercise of the right of first refusal (where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to such right of first refusal), provided that the Accounts that approved the exercise of the right of first refusal are offered the opportunity to buy-out the co-partner on their own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the partnership agreement, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-partner's interest in the partnership in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Aetna on behalf of two or more Accounts, including one or more ERISA-Covered Account(s), to sell the interest of such Accounts in the partnership to a co-partner even though the independent fiduciary for one or more of such ERISA-Covered Account(s) has not approved such sale (where all of the Accounts participating in such investment (other than the General Account) are not in agreement on how to proceed with respect to the buy-sell option), provided that such disapproving Account is first afforded the opportunity to purchase the entire interest of the co-partner.

Section III—Exemption for Transactions Involving a Partnership or Persons Related to a Partnership

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a partnership, or any transaction with the co-partner which arises in connection with the operation of the partnership, by an ERISA-Covered Account that is participating in an interest in the partnership, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the partnership in which the ERISA-Covered Account has an interest as a lender, where the partnership is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Aetna and its affiliates. This condition shall not apply to plans covering employees Aetna and its affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participarting in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments,

(2) a committee comprised of one or more individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Aetna or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income and any cost of living increases thereon) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Aetna, its affiliates, and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in whch such organization or individual serves as an independent fiduciary. The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. However, such income limitation shall not include any income for services rendered to a Single Customer ERISA-Covered Account by an independent fiduciary selected by the Plan Sponsor to the extent determined by the Department in any subsequent prohibited transaction proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from Aetna, its affiliates, or any Account managed by Aetna or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject

recommendations made by Aetna or its affiliates for each of the transactions in this proposed exemption. Aetna and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Aetna maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Aetna or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Aetna, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An *affiliate* of Aetna includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Aetna,

(2) Any officer, director or employee of Aetna or person described in section V(a)(1), and

(3) Any partnership in which Aetna is a partner.

(b) An *Account* means any account managed by Aetna, including the General Account, ERISA-Covered Accounts, Pooled Accounts and Single Customer Accounts, as well as combinations of accounts other than the General Account which are consolidated for investment management purposes as if they were a single account.

(c) The *General Account* means the general asset account of Aetna and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An *ERISA-Covered Account* means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) *Disproportionate* means not in proportion to an Account's existing equity ownership interest in an investment, partnership or partnership interest or interest in a debt.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consumated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Signed at Washington, DC, this 25th day of October, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–25656 Filed 10–29–90; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8448 et al.]

Proposed Exemptions: Anthony Limoncelli, M.D., P.A. Defined Benefit Pension Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform intersted persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Anthony Limoncelli, M.D., P.A. Defined Benefit Pension Plan and Trust (the Plan) Located in Port Charlotte, Florida

[Application No. D-8448]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain land (the Land) to Anthony Limoncelli, M.D. (Dr. Limoncelli), a party in interest with respect to the Plan; provided that the Plan receives the greater of $375,000 or the fair market value at the time of the sale as determined by an independent qualified appraiser.

Summary of Facts and Representations

1. The Plan, established on November 17, 1981, is a defined benefit plan with 10 participants. As of October 31, 1989, the Plan had $678,991 in total assets. The sponsor of the Plan is Anthony Limoncelli, M.D., P.A., a Florida medical corporation which specializes in eye care (the Employer). The trustee of the Plan is Dr. Limoncelli, who is also the sole shareholder of the Employer.

2. The Land, located in Port Charlotte, Florida, is a vacant commercial .979 acre site. The Land was purchased on June 4, 1986, for $327,480 from an unrelated third party. The adjacent .82 acre parcel of land was purchased on the same date by Dr. Limoncelli, personally, for $218,320 from the same unrelated party. The Land is not encumbered by any debt.[1]

3. Dr. Limoncelli proposes to buy the Land from the Plan in a one time cash transaction in which all costs of the sale will be paid by Dr. Limoncelli. The applicant submitted two appraisals of the Land prepared by independent qualified appraisers. The first appraisal (the First Appraisal) of the Land was prepared on February 10, 1990, by Jeffrey Fehr (Mr. Fehr), an independent qualified appraiser with All County Appraisal & Consulting. Mr. Fehr used the market value appraisal approach and determined that the current fair market value appraisal approach and determined that the current fair market value of the Land is $375,000. In an update to the appraisal, performed August 23, 1990, Mr. Fehr concluded that the adjacency of the Land to the property owned by Dr. Limoncelli did not merit a premium above the fair market value of the Land.

4. The second appraisal (the Second Appraisal) of the Land was prepared by Alphus R. Clark, CREA, CRS, GRI (Mr. Clark), an independent licensed Florida real estate broker and salesman with Remax Realty. Mr. Clark also used the market value appraisal approach and determined that the fair market value of the Land as of June 30, 1990, was $371,000. Because the value provided by the Second Appraisal was lower than the value provided by the First Appraisal, Dr. Limoncelli in this transaction will pay the Plan $375,000 in cash, which is the higher of the two fair market values provided by the Appraisals.

5. The applicant represents that the transaction is desirable for the Plan as the sale will increase the liquidity of the Plan's investment portfolio. The applicant represents that the transaction is protective of the Plan because both of the fair market values of the Land have been determined by independent qualified appraisers. Furthermore, the applicant maintains that economic hardship will be sustained if the transaction is denied because the Plan will soon have five more participants and as such will require a diversified investment portfolio which will permit the funding of additional retirement benefits.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction and the Plan will pay no costs associated with the sale;

(b) The price paid to the Plan will be the greater of $375,000 or the fair market value of the Land as determined at the time of the sale by an independent qualified appraiser; and

(c) The sale will allow the Plan to liquidate its investment portfolio.

For Further Information Contact: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Citicorp (Citicorp) Located in New York, New York

[Application No. D-8487]

Proposed Exemption

I. Transactions

A. Effective January 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. Effective January 1, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables

[1] The Department is providing no opinion as to whether the Plan's acquisition and holding of the Land violated any provision of part 4 of title I of the Act.

[2] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[3] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 1, 1988, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[4]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provider under part I is available only if the following conditions are met:

(1) the acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not surbordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connecting therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investments advice with respect to the plan assests used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate

[3] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) for which Citicorp or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificate holders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangement with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Citicorp;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Citicorp; or

(3) Any member of an underwriting syndicate or selling group of which Citicorp or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services receivables contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after January 1, 1988.

Summary of Facts and Representations

1. Citicorp, a bank holding company incorporated in Delaware on December 4, 1967, is an entity that conducts worldwide financial services through its various subsidiaries and affiliates. Citicorp's principal subsidiaries are Citibank, N.A. (Citibank); Citicorp Securities Markets, Inc., a registered broker-dealer; Citicorp Mortgage Securities, Inc. (CMSI); CitiMortgages, Inc.; and Citcorp National Services, Inc. Affiliates of Citicorp include, but are not limited to Citibank; Citibank (New York State); and Citibank Federal Savings Bank. These subsidiaries and affiliates of Citicorp have, or intend to issue, asset-backed securities to qualified investors.[5]

Citicorp represents that it has the legal authority to underwrite asset-backed securities. In orders dated April 30, 1987 and July 14, 1987, the Federal Reserve Board granted CSMI the power to underwrite and deal in residential mortgage-related and consumer-receivable-related securities, subject to the condition that CSMI does not derive more than 5 percent of its total gross revenues from such activities. However, CSMI was not initially empowered, pursuant to the above-mentioned orders, to underwrite or deal in securities representing interests in, or secured by, obligations originated or sponsored by its affiliates. This restriction was removed by the Federal Reserve Board in an order dated September 21, 1989, which also increased the total gross revenues limitation to 10 percent. Also, pursuant to that same order, Citicorp's bank subsidiaries have the power to sell interests in their own assets in the form of asset-backed securities.

Trust Assets

2. Citicorp seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [6] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[7]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[8]

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[5] As described herein, the term "Citicorp" refers to Citicorp and its affiliates unless the context otherwise requires.

[6] The Department notes that Prohibited Transaction Exemption (PTE) 83–1 (48 FR 895, January 7, 1983) a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Citicorp and its affiliates request relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure.

[7] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[8] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Citicorp, or one or more broker-dealers (which may include Citicorp), acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates made to date and all of the public offerings of certificates presently contemplated have been or are to be underwritten on a firm commitment basis. In addition, Citicorp has privately placed certificates on both a firm commitment and an agency basis. Citicorp may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Citicorp requests exemptive relief for two types of multi-class certificates: "Strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[9]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders will share in the amount distributed on a pro rata basis.[10]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies, for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Citicorp, the trust sponsor or the servicer. Citicorp represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the sponsor or servicer. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables

[9] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[10] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investors' interest, the servicer ordinarily convenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts, and printouts.

The sold flags are invisible to the obligor, and do not affect the manner in which the servicer performs the billing, posting, and collection procedures relating to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to the investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment or agency basis. Private placements of certificates may be made on a firm commitment or agency basis.

It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Citicorp. However, affiliates of Citicorp may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to exising contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives cash, or certificates representing the entire beneficial interest in the trust. The sponsor sells some or all of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[11] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting as sponsor) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer, typically, will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid in a lump sum at the time the trust is established, or out of the interest income received on the receivables in excess of the pass-through rate.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into these categories:

(a) Prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments is non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be

[11] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingle with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates.

In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays and sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance.

The repurchase price for such an option is set at a level such that the certificateholders will receive the full amount on all of the receivables held by the trust plus the accured interest at the pass-through rate plus the full amount of property, if any, that has been acquired by the trust through collection on or liquidations of the receivables.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as overcollateralization, surety bonds, letters of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance funds in a timely manner. In some transctions, the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Morever, a master servicer typically can recover advances either from the provider of credit support or from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the master service fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly, or semi-annually as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee:

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large amount that protects investors against

the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the master servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reduction in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect. The protection provided by a floor dollar amount to the credit support applies particularly where the master servicer and the insurer are affiliated or are the same entity. (An entity should not be considered an insurer solely because it holds subordinated certificates.)

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certifications, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach of thereof; a description of the procedures for collection of payments on receivables and for making distribution to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events or default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustees as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such reports also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. Citicorp represents that, to date, it has not entered into any forward delivery commitments in connection with the offering of pass-through certificates. However, Citicorp, states that it is presently contemplating entering into such commitments. Citicorp notes that the utility of forward delivery commitments has been recognized with respect to the offering of similar certificates backed by pools of residential mortgages. As such, Citicorp states that it may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is Citicorp's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. Citicorp has made, and anticipates that it will continue to make, a market in certificates.

Retroactive Relief

26. Citicorp represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted. However, since January 1, 1988, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a

trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Citicorp seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Citicorp has made or caused to be made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The Exemption provides relief from section 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregatge principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest ratings available from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[12]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Citicorp represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[13] In these cases, a direct or indirect sale or certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[14]

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[12] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the proposed exemption. In this regard, the Department does not intend to require that the particular assests contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[13] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Citicorp or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[14] The applicant represents that where a trust sponsor is an affiliate of Citicorp, sales to plans by the sponsor may be exempt under PTE 75–1, part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if Citicorp is not a fiduciary with respect to plan assets to be invested in certificates.

Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Citicorp represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. Citicorp represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Citicorp represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

For further information contact: Ms. Jan Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of October 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 90–25578 Filed 10–29–90; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 90–73; Exemption Application No. D–8204 et al.]

Grant of Individual Exemptions; Waste Management, Inc. and Chemical Waste Management, Inc. Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices states that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Waste Management, Inc. and Chemical Waste Management, Inc. Pension Plan (the Plan) Located in Oak Brook, IL

[Prohibited Transaction Exemption 90–73; Exemption Application No. D–8204]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed: (1) Purchase by the Plan of certain improved real property (the Property), for $5.8 million, from Chemical Waste Management, Inc. (CWM), a party in interest with respect to the Plan; (2) the leasing of the Property by the Plan to CWM under the provisions of a written lease (the Lease); (3) the possible future purchase of the Property by CWM pursuant to a right of first refusal or a call option provision contained in the Lease; (4) the possible sharing by the Plan and CWM in the appreciation of the Property as a result of CWM's construction of Improvements on the Property; and (5) the guarantee by Waste Management, Inc., CWM's parent and the Plan's sponsor, of the Plan's cost basis in the Property upon a sale, assignment or disposition of the

Property to CWM, its assigns or to an unrelated party; provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 28, 1990 at 55 FR 35199.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Dennis Calvert & Associates, Inc. Amended Plan and Trust (the Plan) Located in Memphis, Tennessee

[Prohibited Transaction Exemption 90–74; Exemption Application No. D–8317]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale to Dennis Calvert and Patricia Calvert, disqualified persons with respect to the Plan, of certain unimproved real property (the Property); provided that the sales price is the greater of (i) the fair market value of the Property as determined by a qualified independent appraiser at the time of the sale or (ii) the Plan's aggregrate cost of the acquisition and holding of the Property through the date of the sale.[1]

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1990, at 55 FR 36712.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8881. (This is not a toll-free number).

Pathology and Laboratory Medicine, P.C. Profit Sharing Plan and Dekalb-Gwinnett Pathologists, P.C. Profit Sharing Plan (collectively, the Plans) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 90–75; Exemption Application Nos. D–8363 & D–8364]

Exemption

The restrictions of section 406(a)(1)(D) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (B), (D), and (E) of the Code, shall not apply to the loans (the Loans) by certain individually directed accounts of the Plans (the Accounts) in amounts totaling $390,000 to PLINC Partners; provided that no more than 25% of the assets of any of the Accounts is involved in the Loans and provided further that the terms of the Loans are and remain at least as favorable to any of the Accounts as terms negotiated at arm's length with unrelated third parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1990 at 55 FR 37588.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

StarMark, Inc. Profit Sharing Plan and Trust (the Plan) Located in Sioux Falls, South Dakota

[Prohibited Transaction Exemption 90–76; Exemption Application No. D–8352]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The purchase by the Plan of certain leases of equipment (the Leases) from StarMark, Inc. (the Employer); (2) the agreement by the Employer to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (C) below; and (3) the repurchase by the Employer of the equipment subject to a Lease at the termination of such Lease pursuant to the purchase price option contained in the Lease; provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's-length transaction with an unrelated third party.

B. The acquisition of a Lease from the Employer shall not cause the Plan to hold immediately following the acquisition: (i) More than 25 percent of the current value of Plan assets in Leases sold by the Employer; (ii) more than 3% of Plan assets in a single Lease; or (iii) more than 5 percent of Plan assets in Leases of any one lessee.

C. Upon default by a lessee on any payment due under a Lease, the Employer agrees to indemnify the Plan against any loss resulting from such default and also agrees to repurchase such Lease at full face value, without discount, and repurchase the equipment underlying the Lease at the present value of that equipment based on its value at the end of the Lease. A Lease shall be deemed to be in default for purposes of this section if: (1) A payment due under the terms and conditions of the Lease is past due for a period of 45 days; (2) a lessee defaults in the performance of any other term or condition of the Lease for a period of 45 days; or (3) in the event the lessee shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the lessee; or in the event of the appointment under any jurisdiction at law or in equity of any receiver of the lessee; or in the event the condition of affairs of the lessee shall so change as to, in the opinion of the Trustee or other appropriate Plan fiduciaries, impair its security or increase its credit risks.

D. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property is secured by a perfected security interest in the property leased so that, if there is a default on the Lease, and the security is foreclosed upon, or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan will experience no loss.

E. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee and the proceeds from such insurance will be assigned to the Plan.

F. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably

[1] Pursuant to 29 CFR 2510.3–3(b), there is no jurisdiction under Title I of the Act for the sale because Dennis Calvert is the sole participant of the Plan. However, there is jurisdiction under Title II of the Act pursuant to section 4975(c)(2) of the Code.

related to protecting rights under the Plan, during normal business hours by the Internal Revenue Service, the Department of Labor, Plan participants, any employee organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 14, 1990 at 55 FR 33190.

Notice to Interested Persons: The applicant represents that all interested persons were notified of the proposed exemption within the time period specified in the **Federal Register** notice published on August 14, 1990, and were told that they had a right to comment or request a hearing on the proposed exemption by September 28, 1990. However, interested persons were inadvertently provided with the wrong address for submitting comments or requests for a hearing to the Department. The applicant states that all interested persons were renotified and provided with the correct address by September 14, 1990. Interested persons were advised that they had until October 15, 1990 to comment or request a hearing on the proposed exemption.

Temporary Nature of Exemption: This exemption will not apply to any purchase of Leases by the Plan which occurs after five years from the date on which the Final Grant of this exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523-8883. (This is not a toll-free number.)

Gordon Food Service, Inc. Profit Sharing Plan and the Gordon Food Service, Inc. Security Plan (collectively, the Plans) Located in Grand Rapids, MI

[Prohibited Transaction Exemption 90-77; Exemption Application No. D-8367]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by a group trust (the Group Trust) in which the Plans invest, of an unsecured promissory note (the Note) to Gordon Food Service, Inc., provided the Group Trust receives an amount representing the greater of the fair market value of the Note as of the date of the sale or the outstanding principal balance of the Note plus accrued interest at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 6, 1990 at 55 FR 36722.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 24th day of October, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-25579 Filed 10-29-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-89)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Solar System Exploration Subcommittee.

DATES: November 12, 1990, 9 a.m. to 4:30 p.m.; and November 13, 1990, 8:30 a.m. to 12 Noon.

ADDRESSES: Holiday Inn-Capitol, Columbia Room B, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Wesley T. Huntress, Jr., Code SL, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1588).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The Subcommittee will meet to discuss the Fiscal Year 1991 Budget, Operating Missions, and Strategic Planning. The Subcommittee is chaired by Dr. Laurence Soderblom and is composed of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open.

Agenda:

Monday, November 12

9 a.m.—Fiscal Year 1991 Budget Status.

9:30 a.m.—Comet Rendezvous Asteroid Flyby (CRAF)/Cassini Program.

11 a.m.—Mars Observer Development Status.
11:30 a.m.—Status of Operating Missions.
1 p.m.—Magellan Update.
1:45 p.m.—U.S./U.S.S.R. Joint Working Group.
2:30 p.m.—Research and Analysis (R&A) Programs.
3:30 p.m.—Subcommittee Discussion.
4:30 p.m.—Adjourn.

Tuesday, November 13
8:30 a.m.—Lunar Observer and Mesur Missions.
9:30 a.m.—Strategic Planning.
12 Noon—Adjourn.

Dated: October 23, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-25643 Filed 10-29-90; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255]

Consumers Power Co., Palisades Plant; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-20 issued to Consumers Power Company (the licensee or CPCo), for operation of the Palisades Nuclear Generating Plant (Palisades) located in Van Buren County, Michigan.

Identification of Proposed Action

The amendment would consist of a conversion of the Provisional Operating License (POL) No. DPR-20 to a Full-Term Operating License (FTOL) with an expiration date for the FTOL to be 40 years from the date of issuance of the construction permit. The construction permit for Palisades was issued on March 14, 1967; therefore, the expiration date for the FTOL is March 14, 2007.

The amendment to the license is in response to the licensee's application dated January 22, 1974 for the conversion. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Conversion of the Provisional Operating License to a Full-Term Operating License," Consumers Power Company, Palisades Plant, Docket No. 50-255 dated October 22, 1990.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed conversion of the POL to an FTOL for Palisades. This evaluation considered the previous environmental studies, including the "Final Environmental Statement (FES) Related to Operation of Palisades Nuclear Generating Plant," issued in June 1972, a Final Addendum to the FES (NUREG-0343), issued in February 1978, and more recent NRC policy.

Radiological Impacts

The staff concludes that the exclusion area, the low population zone and the nearest population center distances will likely be unchanged from those described in June 1972 Final Environmental Statement and the February 1978 Final Addendum to the FES. The area adjacent to the site is primarily agricultural land and is sparsely populated. The low population zone (LPZ), as defined by 10 CFR 100, extends a distance of 4,820 meters, or 3 miles, from the plant site. The minimum exclusion area distance to an uncontrolled area is 677 meters (2200 feet). The minimum exclusion area and LPZ distances form the bases for the site evaluation in accordance with 10 CFR part 100 (FSAR Section 2.0). There are approximately 432 acres within the site boundary, all currently owned by Consumers Power Company. Consumers Power Company has sole control of the area within the site boundary for the purpose of excluding personnel or property.

Section 2.1.2 of the Palisades FSAR discusses the population density in and around the Palisades Plant. Table 2.10 of the Palisades FSAR provides current and estimated population density for all counties within a 50-mile radius of the Palisades Plant through the year 2000. A comparison of the FSAR data and the most current census and population growth estimates indicate that the data presented in Table 2.10 of the FSAR accurately estimated population changes to date. Although there are no reliable estimates for the population in the three counties (Berrien, Van Buren, and Allegan) immediately adjacent to the Palisades Plant site for the years between 2000 and 2007, recent population growth and economic trends for southwestern Michigan do not indicate any significant change in population growth trends or to the economic composition of the area.

The probable off-site radiation exposure received by a member of the general public from the operation of the Palisades Plant was assessed and is documented in the Palisades FSAR and the FES. This assessment was based on the assumed 40-year life for the plant. The FES concluded that the operation of the Palisades Plant will contribute only an extremely small increment to the radiation dose that area residents receive from natural background. The FES also noted: "Since fluctuations of the natural background dose may be expected to exceed the small dose increment contributed by the Plant, this increment will be unmeasurable in itself and will constitute no demonstrable meaningful risk. . . ." To ensure that exposure of members of the general public to radioactive material released by the operation of the Palisades Plant is kept as low as is reasonably achievable, the Plant maintains a radiological environmental monitoring program in compliance with the requirements of section IV of appendix I to 10 CFR part 50.

Based on the operating history of the Palisades Plant and the conclusions of the FES, the total radiation dose to any member of the general public is not expected to be significantly affected by the conversion of the POL to a FTOL.

All plant employees are exposed to radiation caused by plant operation. The total exposure received by individual employees depends to a great extent upon the work assignment of the employee. To ensure that employee exposure is minimized, the Palisades Plant has implemented an effective exposure ALARA (As Low As Reasonably Achievable) Program. In addition, the plant has instituted administrative limits that require that the exposure received by individual employees remain within the guidelines of 10 CFR part 20. It is not expected that the issuance of the FTOL will materially affect employee exposure.

Accordingly, annual radiological impacts on man, both off-site and on-site, are not more severe than previously estimated in the FES and our previous cost-benefit conclusions remain valid.

Non-Radiological Impacts

The staff reevaluated the non-radiological aspects of operation of the plant and transmission facilities. The effects of cooling system operation, fish impingement, thermal discharge effects, chemical discharge effects, endangered and threatened species, land use, terrestrial ecology, and transmission lines were evaluated. Effluent limitation and water quality monitoring at power plants are imposed by the EPA through the National Pollutant Discharge Elimination System (NPDES) Permit issued for each facility. An NPDES

Permit for Palisades was issued by the State of Michigan and the staff's discussions in the environmental assessment rely on the findings made by the State in its impact review.

The staff also verified that the original cost/benefit analysis provided in the Final Environmental Statement and Final Addendum to the FES, and discussions with respect to commitment of resources and alternatives, are still valid.

Finding of No Significant Impact

The staff has reviewed the proposed conversion of the POL to an FTOL for Palisades relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated January 22, 1974, (2) the Final Environmental Statement Related to Operations of Palisades Nuclear Generating Plant, issued June 1972, (3) the Final Addendum to the FES, issued February 1978, and (4) the Environmental Assessment Dated October 22, 1990. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Van Zoeren Public Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 22nd day of October 1990.

For the Nuclear Regulatory Commission.

Dominic C. Dilanni,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–25616 Filed 10–29–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana-Michigan Power Co., Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to withdraw its December 5, 1989, application for proposed amendment to Facility Operating License Nos. DPR–58 and DPR–74 for the Donald C. Cool Nuclear Power Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

The proposed amendment would have revised Technical Specification (TS) definition 1.4, "Operational Mode," to clarify the definition of Mode 6 (refueling). A number of other TS changes were included to clarify equipment operability requirements to depending on whether the reactor vessel contains fuel.

The Commission had previously issued a Notice of Consideration of Issuance to Amendment published in the **Federal Register** on April 4, 1990 (55 FR 12596). However, by letter dated September 21, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 5, 1989, and the licensee's letter dated September 21, 1990 which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Date at Rockville, Maryland this 22nd day of October 1990.

For the Nuclear Regulatory Commission.

Timothy G. Colburn, Sr.,

Project Manager, Project Directorate III–1 Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–25615 Filed 10–29–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–4 and NPF–7 issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units 1 and 2 (NA–1&2) located in Louisa County, Virginia.

The proposed change to the NA–1&2 TS 6.3 specifies an exception to ANS–3.1 (12/79 Draft) and would allow the Supervisor Shift Operations to be the individual specified for holding the management-level Senior Reactor Operator's (SRO) license in lieu of the Superintendent Operations. Also, a proposed change to the NA–1&2 TS 6.2.3 and 6.4.1 would change the title of the Nuclear Safety Engineering (NSE) group to Station Nuclear Safety (SNS) to reflect a change in the title of the safety review group at NA–1&2.

ANS–3.1 (12/79 Draft), which is cited in the NA–1&2 TS 6.3 for establishing the qualification requirements of the plant's staff, requires that the individual fulfilling the function of the "Operations Manager" hold a current SRO license. The Superintendent Operations is the equivalent position in the licensee's organization and therefore that position has been filled by persons holding SRO licenses.

The SRO requirement makes it difficult for the Superintendent Operations to perform certain management functions. Specifically, the ability to monitor the quality of operating shift qualification and requalification programs is substantially impaired. The superintendent is not free to fully examine the training programs in progress because he is also a trainee and is thus restricted from obtaining certain information. In addition, a substantial part of the Superintendent Operations' time is consumed in maintaining the SRO license in an active status and requires 60 days of requalification time each year. Therefore, to relieve the Superintendent Operations of this burden and yet satisfy the requirement for an "Operations Manager," a position would be instituted directly subordinate to the Superintendent Operations that has cognizance over all of the NA–1&2 plant operating shifts. The incumbent in this position would be required to maintain a current and active SRO license and would fulfill the functional and qualification requirements of the "Operations Manager" as required by ANS–3.1 (12/79 Draft).

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change request against the standards provided above and has determined that:

(1) The changes to the NA–1&2 TS 6.3 will not result in a significant increase in the probability or consequences of an accident previously evaluated. These changes are made only to the staff organization position of the individual designated to perform the "Operations Manager" functions as described in ANS–3.1 (12/79 Draft) without changing the required levels of training and qualification for that individual. The levels of responsibility and authority of the "Operations Manager" will remain as the individual immediately superior to the operating shift supervisors. The changes will not have any effect on the operation of the plant or any plant components or equipment.

The changes to TS 6.2.3 and 6.4.1 will not create the possibility of a new or different kind of accident. These changes are administrative in nature reflecting only a change in nomenclature. The changes will not have any effect on the operation of the plant or any plant components or equipment.

(3) The changes to the NA–1&2 TS 6.3 will not result in a signficant reduction in the margin of safety. These changes are made only to the staff organzation position of the individual designated to perform the "Operations Manager" functions as described in ANS–3.1 (12/79 Draft) without changing the required levels of training and qualification for that individual. The levels of responsibility and authority of the "Operations Manager" will remain as the individual immediately superior to the operating shift supervisors. The changes will not have any effect on the operation of the plant or any plant components or equipment.

The changes to TS 6.2.3 and 6.4.1 will not result in a significant reduction in the margins of safety. These changes are administrative in nature reflecting only a change in nomenclature. The changes will not have any effect on the operation of the plant or any plant components or equipment.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendments to do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 28, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local Public Document Room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a

hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 22, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 24th day of October 1990.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Project Manager, Project Directorate II-2 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-25614 Filed 10-29-90; 8:45 am]

BILLING CODE 7590-01-M

Privacy Act of 1974; Establishment of a System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Establishment of a system of records.

SUMMARY: Discrimination Cases, NRC-6, is being formally established to track complaints filed with the Department of Labor (DOL) alleging violation of section 210 of the Energy Reorganization Act of 1974, as amended, which prohibits discrimination against whistleblowers with respect to the nuclear industry. This system is used by the NRC Office of Enforcement to stay informed of investigations and decisions made by the DOL with respect to allegations that relate directly to NRC concerns, specifically, violations of relevant NRC regulations and the potential for a chilling effect on other persons who may report safety concerns as a result of the perceived climate of discrimination against whistleblowers. To avoid duplicate effort and conserve Government resources, the NRC may use this DOL investigatory information to take enforcement action without actually conducting an investigation of its own.

DATES: The system of records will take effect without further notice on December 31, 1990, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may be hand-delivered to Lower Level, Gelman Building, 2120 L Street, NW., Washington, DC, between 7:30 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

SUPPLEMENTARY INFORMATION: The NRC's enforcement authority is drawn from the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. Sections 84, 147, and 234 of the Atomic Energy Act authorize the NRC to issue civil penalties for violations of the Act. Under Commission regulations, a violation of section 210 of the Energy Reorganization Act may result in imposition of a civil penalty.

The records in this system of records include those received from DOL concerning complaints filed concerning violations of section 210 of the Energy Reorganization Act, investigations conducted by DOL with respect to these complaints, and decisions issued by DOL in each case. Information regarding action the NRC takes may be publicly disseminated in order to deter future violations

A report of this system of records, required by 5 U.S.C. 552a(r), as implemented by OMB Circular A-130, has been sent to the Chairman, Committee on Government Operations, U.S. House of Representatives; the Chairman, Committee on Governmental Affairs, U.S. Senate; and the Office of Management and Budget.

1. The following system of records, NRC-6, Discrimination Cases—NRC, is being proposed for adoption by the NRC.

NRC-6

SYSTEM NAME:

Discrimination Cases—NRC.

SYSTEM LOCATION:

Primary system—Office of Enforcement, NRC, 11555 Rockville Pike, Rockville, Maryland.

Duplicate system—Duplicate systems may exist, in whole or in part, in enforcement coordinators' offices at NRC Regional Offices at the addresses listed on Addendum I, Part 2. These duplicate systems would ordinarily be limited to the cases filed in each Region.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints with the Department of Labor (DOL) concerning alleged acts of discrimination in violation of section 210(a) of the Energy Reorganization Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of files arranged numerically in accordance with a system established by the DOL ("ERA" numbers) to track complaints filed by individuals pursuant to section 210 of the Energy Reorganization Act. These files include documents related to, and provided by, the DOL, including copies of complaints, correspondence between the parties, and decisions by DOL Area Directors, Administrative Law Judges, and the Secretary of Labor. The system includes a computerized database with alphabetical and numerical indices, by complainants' names and ERA numbers, respectively.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2201; 42 U.S.C. 2282; 42 U.S.C. 5851 (1982); 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored in hard copy and on computer disks.

RETRIEVABILITY:

Information is retrieved by the name or ERA number of the individual or his/her case.

SAFEGUARDS:

The files are maintained in an area for which access is controlled by keycard and limited to those with a need for access to the work area, and in a building to which access is controlled by a security guard force. These files are under visual control during duty hours. After duty hours, access to the building is controlled by a security guard force and access to each floor is controlled by keycard.

RETENTION AND DISPOSAL:

The files are retained indefinitely for historical purposes and for later comparison with other cases to ensure consistency of applications of enforcement.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

NOTIFICATION PROCEDURE:

Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure." Information received from the Department of Labor is treated by DOL as public information and subject to disclosure in accordance with applicable laws.

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains, attorneys for these individuals, union representatives serving as advisors to these individuals, NRC licensees, NRC, and DOL.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated at Rockville, MD, this 17th day of October 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-25617 Filed 10-29-90; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS

Meeting

AGENCY: President's Commission on the Federal Appointment Process.

ACTION: Notice of open meeting.

SUMMARY: The Commission will be holding an open meeting to encourage anyone interested in addressing issues related to the appointment process to share his or her thoughts with members of the Commission.

DATES: November 9, 1990, from 2 p.m. to 3 p.m.

ADDRESSES: The meeting will be held in Conference Room 4830, Department of Commerce, 14th and Constitution, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Alvin S. Felzenberg, Executive Director, President's Commission on the Federal Appointment Process, Room 502, Old Executive Office Building, Washington, DC 20500, (202) 456-6490.

SUPPLEMENTARY INFORMATION: The Commission was established by Executive Order 12719 to advise the President on the best means of simplifying the Presidential appointment process through reducing the number and complexity of forms to be completed by Presidential nominees. The Commission's mandate is to give special attention to achieving coordination between forms required in the executive branch clearance process and forms required by Senate Committees for confirmation hearings.

Alvin S. Felzenberg,

Executive Director.

[FR Doc. 90-25599 Filed 10-29-90; 8:45 am]

BILLING CODE 3510-17-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28574; File No. SR-GSCC-90-05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Authority of GSCC to Pledge and Assign Collateral

The Government Securities Clearing Corporation ("GSCC"), on March 6, 1990, filed a proposed rule change (File No. SR-GSCC-90-05) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 18, 1990, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change involves technical revisions and additions to GSCC Rule 4 (Clearing Fund and Loss Allocation) and GSCC Rule 12 (Securities Settlement) to clarify and confirm GSCC's authority to pledge, hypothecate, or assign collateral (securities, letters of credit, and other interest) in GSCC's possession or control in connection with the financing of GSCC's payment and delivery obligations. GSCC asserts that the rule change would help ensure GSCC's ability to obtain credit on a timely basis

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 28196 (July 11, 1990), 55 FR 29285.

and to the extent needed. GSCC emphasizes that the proposal would not alter GSCC's existing obligations to its members to: (1) To return or to allow substitution for or withdrawal of cash, securities and letters of credit held by GSCC; and (2) to deliver securities held overnight to members, under the circumstances and within the time frames specified in GSCC's Rules.

II. Rationale for the Proposal

GSCC believes that the proposed rule change will help ensure the ability of GSCC to obtain temporary credit on a timely basis and in a manner consistent with preserving the rights of its members to their collateral and that, accordingly, the proposal is consistent with the requirements of section 17A of the Act.

GSCC states in its filing that the rules proposal was recommended by its counsel, Cleary, Gottlieb, Steen & Hamilton ("Cleary Gottlieb"), in order to confirm GSCC's existing authority to pledge and assign collateral to banks that clear securities for GSCC or that provide financing to GSCC in the event of a member default. In support of its proposal, GSCC has incorporated in its filing an opinion letter from Cleary Gottlieb which concludes that GSCC's proposal is in accord with applicable state law.[3] Additionally, Cleary Gottlieb states in its letter that, under section 9–207 and related provisions of the Uniform Commercial Code, as construed by New York case law, and assuming appropriate documents have been executed by authorized persons, GSCC may pledge assets in the form of letters of credit and securities (whether book-entry or certificated) that it hold on deposit and that the pledgees in such transactions would have valid and perfected security interests in the assets.

III. Discussion

The Commission believes that the proposal is consistent with the Act, particularly section 17A(b)(3) of the Act,[4] because it will facilitate GSCC's efforts in obtaining short-term financing to satisfy GSCC's payment obligations in connection with the processing of securities transactions. Accordingly, the Commission is approving the proposal.

GSCC acts as the central counterparty to settle its member's transactions in Government securities through netting by novation. As the central counterparty, GSCC is liable to its members in event of a member default or insolvency for any unsettled, guaranteed delivery or payment obligations. In such an event, GSCC could be required to pay the defaulting member's transaction adjustment payments [5] or to hold securities that GSCC would otherwise have delivered to the defaulting member.[6] Although GSCC attempts to protect against this risk by requiring members to deposit cash, government securities or letters of credit, the defaulting member's individual deposit may be inadequate or illiquid to satisfy that member's payment obligation. In that case, GSCC could be required to borrow funds from GSCC's clearing fund (which consists of other member deposits) or from third parties. Assuming available clearing fund cash is insufficient, GSCC would attempt to borrow funds from banks with whom GSCC has previously arranged credit facilities, using non-defaulting member required clearing fund contributions as initial collateral.[7] In order to facilitate such financing, GSCC must be able to assure potantial bank creditors that they will have a perfected security interest in the collateral GSCC may provide. The proposal would facilitate this result by clarifying GSCC's authority to transfer a security interest in assets GSCC would use as collateral for these loans.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–90–05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25576 Filed 10–29–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28573; File No. SR–NSCC–90–14]

October 23, 1990.

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change by National Securities Clearing Corporation Regarding a Modification to its Fund/SERV Rules

On August 16, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. NSCC–90–14) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change is to provide for the automated processing of mutual fund underwritings and tender offers through NSCC's Fund/SERV service. On September 12, 1990, NSCC amended the filing to provide for Commission review pursuant to section 19(b)(2), rather than section 19(b)(3)(A), of the Act.[2] Notice of the amended proposed rule change appeared in the **Federal Register** on October 1, 1990.[3] No comments were received regarding the proposed rule change. This order approves the proposed rule change.

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[3] *See* letter from Sydney M. Cone, III, Partner, Cleary, Gottlieb to Security Pacific National Trust Co., dated March 29, 1990.

[4] Section 17A(b)(3) of the Act requires that a clearing agency have the capacity to safeguard funds and securities in its possession and control and facilitate the prompt and accurate clearance and settlement of securities transactions.

[5] The transaction adjustment payment generally reflects the difference between the contract value of all of a clearing member's netted trades and the value GSCC assigned to the securities underlying those contracts in the netting system.

[6] GSCC routinely instructs its clearing bank to deliver securities from one clearing member to another clearing member when those securities are received. Those allocations are not binding on GSCC members and reflect an allocation of GSCC's securities inventory as a result of its netting operation. *See* Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798. In the event of a member default or insolvency prevented GSCC from delivering securities it had received as originaly allocated, GSCC may not be able to reallocate some or all of those securities to other, non-defaulting members. Accordingly, the proposal would clarify GSCC's authority to pledge those securities to a bank for funds necessary to hold those securities until GSCC could allocate them to another member or sell those securities.

[7] GSCC has established credit facilities with its clearing agent banks. In addition to receiving and delivering securitities in accordance with GSCC's instructions, these banks also will maintain possession, for GSCC's account, clearing fund assets, such as Government securities. This arrangement facilities prompt funding of any loans because the collateral for any loan will be readily available.

The pledge of non-defaulting clearing members' required clearing fund deposits, however, would not affect an allocation of any losses GSCC might incur as a result of the default. GSCC would allocate such losses, ordinarily on the day after a default, in accordance with its rules. *See, e.g.*, Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1989).

[2] *See* letter from Alison Hoffman, Associate Counsel, NSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated September 12, 1990.

[3] *See*, Securities Exchange Act Release No. 28456 (September 20, 1990), 55 FR 40028 (October 1, 1990).

I. Description of the Proposal

This proposal modifies the Fund/SERV system to accommodate underwritings and tender offers on an automated basis.[4] The proposal will amend NSCC's rules to enable Fund/SERV members to submit expressions of interest during an underwriting period [5] and redemption orders during a tender offer.[6]

Under the proposed rule change, a mutual fund will be required to submit to the NSCC the details of the underwriting or tender offer.[7] The mutual fund must submit the end date [8] or ticketing date,[9] settlement date, and restrictions on participation and types of transactions.[10] NSCC will reject purchases and tenders submitted by members that do not meet the pre-established parameters.[11]

Under the proposal, members may submit orders to tender securities and expressions of interest in an underwriting until the end date or ticketing date. During this period, NSCC will forward the orders and expressions of interest to the mutual fund. Members, however, may delete any expression of interest until ticketing date and may withdraw tendered shares until the end date.[12] After ticketing date or end date, expressions of interest become firm commitments and tender offers not withdrawn become firm offers to tender. Within two days after the ticketing date or end date, the mutual fund must confirm, correct or reject the orders to tender securities and offers involving an underwriting. Confirmed items will pend in the system and will settle on the date specified by the mutual fund. Thereafter, normal Fund/SERV processing timeframes and procedures will apply.

NSCC will settle underwriting orders and orders pursuant to tenders on the date specified by the mutual fund, usually five days after end date. Under the proposal, the mutual fund may cancel the underwriting or tender, or may change the ticketing date, the end date or the settlement date of the underwriting or tender offer up until 12:00 noon, three days prior to settlement date.[13] NSCC will not process changes or cancellations of an underwriting or tender offer received after 12:00 noon, three days prior to settlement.

The proposed rule change will make certain technical corrections to the Fund/SERV rules when physical certificates remain outstanding. In these circumstances, the certificate evidencing the security will not have been delivered, and any redemption proceeds must be withheld. Accordingly, NSCC will require the mutual fund to issue a release before completing the redemption process and releasing the proceeds.

According to NSCC, it already processes in Fund/SERV many of the transactions covered by the proposed rule change because members currently enter those orders in Fund/SERV five days prior to settlement. Thus, NSCC believes the proposal will not significantly add additional order flow in the system and it has represented that the system has sufficient capacity to accommodate any increase.

II. NSCC's Rational

NSCC believes that the proposed rule change is consistent with Section 17A of the Act since the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible.

III. Discussion

The Commission believes that NSCC's proposal is consistent with section 17A of the Act. Specifically, sections 17A(b)(3) (A) and (F) of the Act provide that a clearing agency be so organized to facilitate and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and must assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[14]

Currently, participants must transmit their tender offers and expressions of interest directly to the mutual fund and then enter their orders to the Fund/SERV system five days before settlement. The proposal provides participants with the ability to tender securities and submit expressions of interest, have those transactions pend in the system until the end of the tender offer or underwriting period, and settle those transactions, all through Fund/SERV. Thus, the Commission believes that the proposal provides participants a more efficient means of processing orders of mutual fund underwritings and tender offers and will further enhance the prompt and accurate clearance and settlement of mutual fund transactions.

Processing of underwriting and tender instructions will be governed by the same rules and safeguards currently employed for other Fund/SERV transactions. Moreover, bringing mutual fund underwritings and tender offers into a centralized and automated environment will reduce the risk of failed deliveries, inadequate transaction records and operational errors. Thus, the Commission believes the proposal will enhance the safeguarding of mutual fund securities and funds.

Under NSCC's procedures, NSCC will not process changes to or cancellation of an underwriting or tender offer received

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[4] In 1986, NSCC implemented Fund/SERV, a centralized and automated order entry, confirmation and settlement system for mutual funds. *See*, Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6954 (February 27, 1986); Securities Exchange Act Release No. 25146 (November 20, 1987) 52 FR 45418 (November 27, 1987).

In an effort to provide members and mutual funds greater efficiencies through enhanced automated functions, NSCC has continuously expanded the services provided under Fund/SERV. *See*, Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 (December 28, 1988), which approved "Networking," a service designed to enable the transmission of customer account data between NSCC's broker-dealer and mutual fund processing members.

[5] Underwritings usually have an extended time period during which an individual may express an interest to purchase the shares. In underwritings, shares can be offered on a preliminary basis prior to registration. Orders placed during this time are considered "expressions of interest." The orders do not become firm commitments until "ticketing date." Prior to ticketing date, expressions of interest can be withdrawn.

[6] In mutual fund "tender offers" there is an extended period during which a shareholder may place a redemption order at a certain price, which can be withdrawn up until the "end date." These "tender offers" usually involve trust companies that continuously offer their securities for sale but do not redeem their securities, except on a periodic basis through published offers to redeem outstanding shares. For purposes of the federal securities laws, particularly the Investment Company Act of 1940, 15 U.S.C. 80a-1, these issuers are treated as close-end investment companies.

[7] The mutual fund must submit the information on a written form at least five days before the beginning of the underwriting or tender offer. *See* letter from Alison Hoffman, Associate Counsel, NSCC, to Anthony Bosch, Staff Attorney, Division of Market Regulation, Commission, dated October 17, 1990.

[8] The "end date" is the last date shareholders may tender shares under a tender offer.

[9] The "ticketing date" is the date on which expressions of interest or indications of interest become firm commitments to purchase securities.

[10] Issuers may place certain restrictions on participation in an underwriting or tender offer. For example, certain broker-dealers may be ineligible to purchase shares during the offering period or for a time after the offering period (called the "cooling off period" for underwriting), purchases of additional shares during the cooling off period may be prohibited, and exchanges following the tender period may not be allowed.

[11] The mutual fund is responsible for establishing the parameters of the tender offer or underwriting. If discrepancies exist in the restrictions on participation and types of transactions, it is the responsibility of the mutual fund and members, not NSCC, to resolve any discrepancies.

[12] A member may withdraw tendered shares by submitting a "correction" instruction to NSCC. NSCC will correct the tender by instructing the mutual fund that the number of shares tendered has been reduced to zero.

[13] *See* letter from Alison Hoffman, *supra*, f.n. 7.

[14] 15 U.S.C. 78q-1(b)(3) (A) and (F) (1989).

after 12:00 noon, three days prior to settlement. NSCC states that to cancel or change a settlement date after three days prior to settlement would be extremely difficult because the orders are submitted for netting that evening and would require that such transactions be manually exited from the system. The failure to cancel an underwriting or a tender offer might require NSCC members to settle transactions for an underwriting or tender offer that have been cancelled, including transactions of an underwriting that may not be part of a valid offering under the Investment Company Act of 1940 or the rules thereunder. NSCC, however, has stated that in a case of a late cancellation of an underwriting or a tender offer NSCC would attempt to exit the transactions from the system manually before settlement date.[15] Because late cancellations of mutual fund underwritings and tender offers are rare and because NSCC has indicated it will attempt to exit the transactions associated with a late cancellation of an underwriting of tender offer, the Commission believes that NSCC has reached a reasonable balance between efficient settlement of mutual fund securities and the appropriate accommodations to mutual funds to allow tender offerings and underwritings to be processed through an automated and centralized system.

The Commission believes "good cause" exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of notice. The proposal will allow NSCC members to submit tender offers and expressions of interest prior to the fifth day prior to settlement. Except for the pending of transactions prior to the end of the tender offer or underwriting period, these transactions will be processed essentially the same as other Fund/SERV transactions. Moreover, the Commission believes the inclusion of these transactions in Fund/SERV will increase the efficient, prompt, and accurate settlement of underwritings and tender offers. Thus, the Commission finds that good cause exists, pursuant to section 19(b)(2) of the Act, for approving the proposal prior to the thirtieth day after the date of publication of the notice in the **Federal Register.**

[15] A late cancellation of a mutual fund underwriting or tender offer occurring two days after the end of a underwriting or tender offer period is rare. NSCC has indicated that it has never received a request to exit an underwriting or a tender offer from the system after three days prior to settlement.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, Section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–90–14) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25624 Filed 10–29–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17819; 812–7226]

The PNC Fund et al.; Notice of Application

October 24, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The PNC Fund (formerly NCP Funds) (the "Fund"), Provident Institutional Management Corporation ("PIMC"), and TBC Funds Distributor, Inc. ("TBC").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(C) from section 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the issuance and sale of two classes of securities representing interests in the Money Market Portfolio, the Tax-Free Money Market Portfolio, and the Government Money Market Portfolio of the Fund (collectively, the "Money Market Portfolios"). Both classes would be indentical in all respects except for differences related to rule 12b–1 plan expenses, shareholder services plan expenses, transfer agency expenses, and voting rights.

FILING DATE: The application was filed on January 25, 1989 and was amended on August 7, 1989, April 13, 1990, June 20, 1990, and October 12, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. PNC Fund and PIMC, Bellevue Corporate Center, 103 Bellevue Parkway, Wilmington, Delaware 19809. TBC, One Boston Place, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. The Fund is registered under the Act as an open-end management investment company, and has registered shares representing interests in eight investment portfolios, including the three Money Market Portfolios. The Fund proposes to issue two classes of shares in each of the three Money Market Portfolios. One class of shares in each Money Market Portfolio (the "Sower Class") will be offered and sold to institutional investors ("Institutions") acting on behalf of their customers who maintain accounts with the Institutions. The other class of shares in each Money Market Portfolio (the "Cash Class") will be offered and sold to investors generally, whether or not they have an account relationship with an Institution.

2. Applicants request that the relief extend to any other investment portfolio of the Fund that in the future declares dividends on a daily basis and calculates its net asset value under the amortized cost method of valuation under Rule 2a–7 under the Act. The Money Market Portfolios and any other investment portfolios of the Fund to which relief can be extended are collectively called "Daily Dividend Portfolios."

3. PIMC serves as the Fund's investment adviser. Provident National Bank serves as the Fund's custodian and the sub-adviser to the Money and Government Portfolios. The Central Trust Company, N.A. serves as the sub-

adviser to the Tax-Free Portfolio. TBC serves as the Fund's Distributor.

4. Shares of each Daily Dividend Portfolio will be sold and redeemed daily at net asset value without a sales or redemption charge imposed by the Fund. The net asset value per share of each Money Market Portfolio will be calculated based on the amortized cost method of valuation and will be determined twice daily on each day the New York Stock Exchange and the Federal Reserve Bank of Philadelphia are open. The net investment income of each Money Market Portfolio will be declared daily and paid monthly as a dividend to shareholders.

5. Except for class designation, exchange privileges, and the allocation of certain expenses and voting rights as described below, each class of a Daily Dividend Portfolio will be identical in all respects. Among other things, each Daily Dividend Portfolio's Shares will be subject to the sasme investment objective, policies and limitations. The two classes will differ, however, in that: (a) The Sower Class of a Daily Dividend Portfolio will be offered to Institutions in connection with a shareholder services plan (the "Shareholder Services Plan") and the Cash Class will be offered to individual investors in connection with a distribution plan adopted pursuant to rule 12b–1 under the Act (the "12b–1 Plan") (the Shareholder Services Plan and 12b–1 Plan are collectively called the "Plans"); (b) each Sower Class and Cash Class will bear the expenses incurred pursuant to the terms of the Plan applicable to that class ("Plan Payments"); (c) each Sower Class and Cash Class will also bear transfer agency expenses directly attributable to the class; and (d) only the holders of the shares of the Cash Class or Cash Classes involved will be entitled to vote on matters pertaining to the 12b–1 Plans, and any related agreements, relating to such class or classes (for example, the adoption, amendment or termination of a Plan) in accordance with the provisions of Rule 12b–1. The Sower Class and Cash Class of a Daily Dividend Portfolio may also differ with respect to exchange privileges; currently only the Cash Class has an exchange privilege. It is anticipated that shares of a Cash Class of a particular investment portfolio would be exchangeable for Cash Class shares of another investment portfolio and shares of a non-money market portfolio.

6. The purpose of the Shareholder Services Plan will be to provide support services to customers of Institutions ("Service Organizations") who from time to time beneficially own shares of the Sower Class. Such support services will be provided pursuant to servicing agreements entered into with the Service Organizations. Applicants state that the provision of support services under the proposed Shareholder Services Plan will not duplicate the services that are currently provided to the Fund by its service contractors (*e.g.*, its investment adviser, sub-adviser, co-administrators, transfer agent, custodian, and distributor).

7. The 12b–1 Plan will provide not only for support services, but also for certain expenses incurred in connection with the distribution of shares of the Cash Classes. In contrast to the Shareholder Services Plan, which is designed to provide support services in situations where it is anticipated that neither the Service Organization nor the Fund's distributor will engage in significant distribution activities justifying the reimbursement of distribution-related expenses, an explicit purpose of the 12b–1 Plan will be to finance distribution activities in connection with the sale of Cash Class shares. The 12b–1 Plan also will permit the Fund to pay for support services by Institutions, such as those described above in connection with the Shareholder Services Plan.

8. Under the current Shareholder Services Plan, a Daily Dividend Portfolio will pay Service Organizations an amount not to exceed .30% (annualized) of the average daily net asset value of the portfolio's outstanding Sower Class shares. Payments by a Daily Dividend Portfolio under the current 12b–1 Plan will not exceed .55% (annualized) of the average daily net asset value of the Portfolio's outstanding Cash Class shares. The 12b–1 Plan, as well as any related agreements, will be subject to all of the provisions of Rule 12b–1 under the Act. In addition, the Shareholder Services Plan will be adopted by the Fund's board of trustees pursuant to procedures offering the major protections to investors provided by Rule 12b–1, except that shareholders will not enjoy the voting rights specified in Rule 12b–1.

9. By offering Sower Class shares and Cash Class shares, the Fund expects to achieve added flexibility in meeting the service and investment needs of shareholders and future investors. The Fund believes that the expense of the payments made with respect to a particular Sower Class or Cash Class appropriately should be borne by the shareholders of such class because the benefits of the Plans will accrue to them. It would be inefficient, and in some instances economically or operationally unfeasible, to organize a separate Daily Dividend Portfolio for each Sower Class and Cash Class.

10. The net asset value of all outstanding shares representing interests in the same Daily Dividend Portfolio will be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to the Daily Dividend Portfolio involved, subtracting the liabilities charged to such Daily Dividend Portfolio, and dividing the result by the number of such outstanding shares. Further, the gross income of a Daily Dividend Portfolio will be allocated on a pro rata basis to each outstanding share in the Daily Dividend Portfolio regardless of class, and all expenses incurred by the Daily Dividend Portfolio will be borne on a pro rata basis by such outstanding shares, except that Plan Payments and transfer agency expenses will be allocated according to class.

11. Because of the Plan Payments and transfer agency expenses, the net income of (and dividends payable to) each class will be somewhat different than that net income of (and dividends payable to) the other class in the same Daily Dividend Portfolio. Dividends paid to each class in a Daily Dividend Portfolio will, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expense of Plan Payments and transfer agency expenses, will be determined in the same manner and paid in the same amounts.

Applicant's Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act to permit the propose issuance and sale of Sower Class shares and Cash Class shares representing interests in Daily Dividend Portfolios to the extent that the issuance and sale of such shares, including the allocation of voting rights thereto and the payment of dividends thereon as described above, might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. The proposed allocation of expenses and voting rights in the manner described is equitable and will not discriminate against any group of shareholders. Investors purchasing Sower Class shares or Cash Class shares, and receiving the services provided under the Plan and the transfer agency services associated with the particular shares, will bear the costs associated with such services. Investors

also will enjoy exclusive shareholder voting rights with respect to matters affecting their Plan.

2. The proposed arrangement does not involve borrowings and does not affect the Fund's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Daily Dividend Portfolio, because all shares in a Daily Dividend Portfolio will participate pro rata in all of the Daily Dividend Portfolio's income and expenses (with the exception of the Plan Payments and transfer agency expenses). Accordingly, the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Sower Class and Cash Class of Daily Dividend Portfolio will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences between the Sower Class and Cash Class shares of the Fund representing interests in the same Daily Dividend Portfolio will relate soley to: (a) The impact of Plan Payments, the transfer agency expenses attributable to each such class, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respct to the Fund's 12b–1 Plan and Shareholder Services Plan; (c) the different exchange privileges of such classes; and (d) the designation of each such class.

2. The trustees of the Fund, including a majority of the independent trustees, will approve the dual distribution system by an affirmative vote prior to the implementation of the dual distribution system. The minutes of the meetings of the trustees of the Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the dual distribution system will reflect in detail the reasons for the trustee's determination that the proposed dual distribution system is in the best interests of both the Fund and its shareholders and such minutes will be available for inspection by the SEC staff and will be preserved for a period of not less than six years, the first two years in an easily accessible place.

3. On an ongoing basis, the trustees of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the Sower and Cash Classes. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. PIMC and TBC will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, PIMC and TBC at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The 12b–1 Plan relating to the sale of shares of Cash Classes will be approved and reviewed by the Fund's trustees in accordance with the requirements and procedures set forth in Rule 12b–1, both currently and as that rule may be amended in the future. The Fund's 12b–1 Plan will be submitted to the republic shareholders of the Cash Class for approval at the next meeting of shareholders after the initial issuance of shares of such class. Such meeting is to be held within one year from the date that such shares are initially issued. Any other series relying in the future on the order granted on the application will hold a meeting of shareholders within one year of the first date that more than one Class is issued and outstanding and will submit its 12b–1 Plan for the separate approval of the public holders of each affected Cash Class at such meeting; provided that the approval of a particular Cash Class of shareholders shall not be necessary if the existing 12b–1 Plan has already been submitted for the approval of the public shareholders of such class.

5. The Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in Rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to Rule 12b–1, except that shareholders will not enjoy the voting rights specified in Rule 12b–1. In evaluating the Shareholder Services Plan, the trustees will specifically consider whether (a) the Shareholder Services Plan is in the best interest of the applicable Sower Classes and their respective shareholders, (b) the services to be performed pursuant to the Shareholder Services Plan are required for the operation of the applicable Sower Classes, (c) the service organizations can provide services at least equal, in nature and equality, to those provided by others, including the Fund, providing similar services, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each shareholder service agreement entered into pursuant to the Shareholder Service Plan will contain a representation by the service provider that any compensation payable to the service provider in connection with the investment of its customers' assets in shares of a Sower Class (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the service provider.

7. Each shareholder services agreement entered into pursuant to the Shareholder Service Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for shareholder approval, the service provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customer's accounts.

8. The trustees of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures for the Sower and Cash Classes complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

9. Dividends paid by the Fund with respect to each class of a Daily Dividend Portfolio, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to the other class in the same Portfolio, except that any Plan Payments and transfer agency expenses relating to a class will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value, dividends and distributions of the Sower and Cash Classes and the proper allocation of expenses between those classes has been reviewed by an expert (the "Expert") who has rendered a

report to the Fund, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upn such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. The Fund has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends and distributions of the Sower and Cash Classes of Shares and the proper allocation of expenses between such Classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

12. The prospectus for each Daily Dividend Portfolio with more than one class will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another class in the same Daily Dividend Portfolio.

13. The Fund's distributor will adopt compliance standards, substantially in the form of Exhibit E to the application, as to when each Sower and Cash Class of shares may appropriately be sold to particular investors. Applicants will require all persons selling Sower and Cash Shares to agree to conform to such standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Fund with respect to the dual distribution system will be set forth in guidelines which will be furnished to the trustees.

15. Each Daily Dividend Portfolio will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to shares of Sower and Cash Classes of the same Daily Divided Portfolio in every prospectus, regardless of whether such classes of shares are offered through each prospectus. Each Daily Dividend Portfolio will disclose the respective expenses and performance data applicable to all classes or shares of the same Daily Dividend Portfolio in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares in the same Daily Dividend Portfolio. The information provided by the Fund for publication in any newspaper or similar listing of a Daily Dividend Portfolio's net asset value and public offering price will present each class of shares in the same Daily Dividened Portfolio separately.

16. Each Daily Dividend Portfolio will have more than one class of shares outstanding only when and for so long as such Daily Dividend Portfolio declares its dividends on a daily basis, accrues its payments for the 12b-1 Plan, Shareholder Services Plan, and transfer agency services daily, and has received undertakings from the persons that are entitled to receive payments under the Plans and for transfer agency services waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any such class of shares on any day not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in a Daily Dividend Portfolio will remain the same.

17. Applicants acknowlege that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescene in any particular level of Plan Payments that the Fund may make in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margarent H. McFarland,

Deputy Secreatary.

[FR Doc. 90-25625 Filed 10-29; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28577; File No. 10-100]

Self-Regulatory Organizations; Wunsch Auction Systems, Inc.; Application for Limited Volume Exemption From Registration as an Exchange Under Section 5 of the Securities and Exchange Act; Request for Comments

October 24, 1990.

I. Introduction

Wunsch Auction Systems Inc. ("WASI") owns and proposes to operate a computerized, "single-price" auction system ("Wunsch System") designed to facilitate secondary market trading of certain equity and fixed income securities. By letter, dated October 3, 1990, WASI filed with the Commission, pursuant to section 5 of the Securities Exchange Act of 1934 ("Act"), an application for exemption for both WASI and the Wunsch System from registration as a national securities exchange under section 6 of the Act by reason of the fact that WASI anticipates that the Wunsch System will account for limited volume in trading of securities.[1] Although section 5 does not require publication of such a request for exemption, this is the first such request in 54 years; [2] accordingly, the

[1] *See* letter from Krsiten N. Geyer, Cadwalader, Wickersham & Taft, counsel for WASI, to Jonathan G. Katz, Secretary, dated October 3, 1990, contained in Public File No. 10-100. In a related matter, WASI has requested that the staff take a no-action position with respect to: (1) The non-registration of WASI and the Wunsch System as a broker-dealer under section 15(a) of the Act; (2) the non-registration of a brokerage subsidiary of Bankers Trust New York Corporation, BT Brokerage, as a national securities exchange under the Section 6 of the Act; and (3) the non-registration of WASI, the Wunsch System, and BT Brokerage as a securities information processor, transfer agent, and clearing agency under sections 11A and 17A of the Act, respectively. Letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, counsel for WASI, to John M. Ramsey, Attorney, dated August 28, 1990.

[2] As discussed *infra* note 12, the Commission has granted Section 5 exemptions on other than a temporary basis to seven exchanges. The applications of those exempted exchanges were made available to the public.

Commission has determined, in its discretion, to publish this notice in order to solicit the views of interested persons on this application.

II. Description of the Wunsch System [3]

The Wunsch System, through electronic facilities owned and operated by WASI, will permit institutional and broker-dealer participants [4] to enter buy and sell orders for particular securities selected by WASI and offered through an auction format; by bringing those buy and sell orders together at one point in time, the System will arrive at a single, "equilibrium" price at which the securities offered in the auction will be sold.[5] By means of linkages form the custormers' terminals to the main computer,[6] customers will enter limit orders through their terminals until a previously established cutoff time; once logged into the System, the customers will be able to view the order books for the auction of any security and place orders in such auctions. Bids and offers, their prices and volumes, separately and in the aggregate, are displayed. Prior to the acution cutoff time, customers may at any time replace or cancel orders by referencing a screen montague showing continuously updated indications of the auction price and volume based on current ordes in the system.[7]

Immediatley after each auction cutoff time, the System will commence a review of orders entered to determine the price at which the largest volume could be traded, which is also the price at which buying and selling interest is most nearly equal. That price would be the "auction price." The customers that entered bids above, and offers below, the auction price will be entitled to executions at the auction price. Limit orders equal to the acution price will be filled on the basis of time priority to the extent that counterparties are available. To consummate auction trades to provide each customer with a known counterparty with credit-standing, a broker-dealer [8] will, at its option, either execute all orders as agent obligated to complete the trade or purchase form each "in the money" offeror and sell to each "in the money" bidder the requisite amount of securities at the auction price.[9] A bank subsidieary of Bankers Trust ("bank subsidiary") will clear and settle, and facilitate the comparison of, trades executed in the Wunsch System through an account established by the bank subsidiary at the Depository Trust Company ("DTC"), a clearing agency registered with the Commission under section 17A of the Act.

III. Exemption Standards

Section 5 of the Act effectively requires that all exchanges subject to the jurisdiction of the United States either register with the Commission as national securities exchanges or obtain a Commission exemption from that requirement.[10] Section 5 authorizes the Commission to grant an exemption from registration if the Commission finds that, "by reason of the limited volume of transactions effected on [the] exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors" to require such registration.[11]

In its release proposing Rule 15c2–10 under the Act ("Rule 15c2–10 release"),[12] the Commission discussed the standards for determining whether an exchange is entitled to a low volume exemption and solicited comment on those suggested standards. Specifically, the Commission requested comment on whether it should interpret the term "limited volume" as employed in Section 5 of the Act to take into account all, or a combination of, the following characteristics, among others that might be suggested by the commentators: (1) The dollar volume and/or number of transactions effected through the system, expressed as a percentage of all trading effected in the market of which that particular system is a part; (2) the number and characteristics of participants or subscribers permitted to trade in the system; and (3) the characteristics of the instruments traded, or transactions allowed, in the system.

The Commission received three comments addressing the proper interpretation of the term "limited volume." [13] CBOE suggested that the term "limited volume" should be defined in terms of a maximum dollar volume or percentage share of the relevant market, whichever is the lower standard;[14] it staed that the number and characteristics of the participants, as well as the characteristics of the instruments traded, would be relevant to determining the appropriate dollar volume or percentage share. CBOE further suggested that the maximum threshold for a limited volume exemption should be either 1 percent of the relevant market or a previously established dollar volume amount, whichever is lower. In other words, the CBOE felt that the overall concept of a limited volume was meant to be a *de minimis* or insignificant amount of volume. Instinet noted that it trades approximately 10 million shares a day compared with the NYSE, which in 1989 traded closer to 200 million shares a day, or the National Association of

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[3] This description is based upon the material representatons made by WASI in its letter requesting the exemption, *see supra* note 1.

[4] The System's institutional customers would include both so called "buy-side" firms, such as privated and public pension funds, endowments, foundations, money managers, bank trust departments and insurance companies, and so-called "sell-side"firms, such as broker-dealers, including "upstairs" members of exchanges and exchange specialists.

[5] WASI contemplates that, initially, the auctions will take place three times a week, outside the trading hours of the New York Stock Exchange ("NYSE"). Each auction will last approximately one-half hour.

[6] Customers' terminals will be linked to the main computer by direct lines, modems, or public data networks, at the discretion of the customer. The main computer, located in WASI's data center in Minneapolis, Minnesota, operates on a uninterrumptable power supply and is serviced by the manufacturer under a contract to repair any failure on the day in which it occurs. The Wunsch system has sufficient capacity to handle simultaneously up to 5,000 separate securities, and to process up to 500 orders per second. WASI has adopted a system of passwords (one password for logging in, another for order entry), a proprietary communications protocol, data encryption, error detection and other security measures designed to protect the system against unauthorized entry.

[7] In order to discourage the cancellation of orders, WASI proposed to charge customers two commissions, on both the buy and sell side, for each cancelled order. Customers may replace orders with more aggressive orders (*i.e.*, higher bids or lower offers) without penalty, but will be penalized for replacing an order with a less aggressive one (*i.e.*, a lower bid or higher offer).

[8] A broker-dealer subsidiary of Bankers Trust New York Corporation, BT Brokerage, will perform this function. WASI will not assume positions or handle customer funds.

[9] In a procedure that WASI believes constitutes compliance with the off-borad trading rule adopted by the NYSE (*i.e.*, rule 390), BT Brokerage may route orders executed by BT Brokerage in New York City to one or more overseas affiliates of the broker-dealer for time-stamping in the appropriate overseas market, *e.g.*, the International Stock Exhcnage in London, or the Singapore Stock Exchange.

[10] 15 U.S.C. 78e (1988).

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429. In seven instances the Commission has granted section 5 exemptions to exchanges on other than a temporary basis. *See* Securities Exchange Act Release Nos. 415, November 14, 1935 (exempting the Honolulu and Minneapolis-St. Paul Stock Exchanges and the Milwaukee Grain and Stock Exchange); 432, December 2, 1935 (exempting the Richmond and Wheeling Stock Exchanges); 472, February 3, 1936 (exempting the Colorado Springs Stock Exchange); and 589, April 10, 1936 (exempting the Seattle Stock Exchange).

[13] Letters from: (1) Alger B. Chapman, Chairman, Chicago Board Options Exchange ("CBOE"), to the Commission, dated August 7, 1989 ("CBOE letter"); (2) Daniel T. Brooks, Cadwalader, Wickersham & Taft, counsel for Instinet Corporation, to the Commission, dated August 2, 1989 ("Instinet letter"); and (3) Thomas R. Donovan, President, Board of Trade of the City of Chicago ("CBT"), to the Commission, dated July 19, 1989 ("CBT letter"). These letters are contained in Public File No. S7–13–89.

[14] CBOE letter, at 8–13.

Securities Dealers ("NASD"), which traded close to 150 million shares a day.[15] Finally, CBT stated that all three elements of the test proposed by the Commission could be relevant to a determination to grant an exemption to a particular exchange; however, CBT cautioned that, in applying those factors, the Commission should not "swallow the exchange registration rule" and thus defeat Congress' purpose.[16]

As a separate matter, the Commission also noted that it could, as it has in the past, impose conditions on registration exemptions if they are granted. For example, in prior exemptive orders the Commission has imposed on exempted exchanges recordkeeping and reporting requirements, and requirements to comply and to enforce compliance with the Act. Similarly, the Commission noted that future exemptions could be conditioned on exempted exchanges' being required to file plans and plan amendments with the Commission, and to submit to: (1) Commission review of action taken by the exchanges denying access to the system to current or prospective members; and (2) Commission jurisdiction to amend the rules of the exchange if the public interest so requires. Comments received indicated that an exemption could be conditioned on compliance with a rule or requirements substantially equivalent to those encompassed in proposed Rule 15c2–10.[17]

IV. Solicitation of Comment on the Wunsch System

While not specifically discussed in the Rule 15c2–10 proposal, consideration of an application for exemption submitted by an exchange with no previous operating history requires the Commission to make a prediction of likely trading volume. As a preliminary matter, the Commission believes that the facts that the Wunsch System will conduct auctions only three times a week, and the absence of any participation in the System of broker-dealers with market-making obligations, strongly suggest that the dollar and share volume traded through the Wunsch System, expressed in absolute terms or as a percentage of other markets, will be limited.[18]

Moreover, the Commission expects to impose the following minimum conditions upon WASI as a condition of any such exemption: (1) Continued registration of BT Brokerage as a broker-dealer under section 15(a) of the Act and the continued membership of BT Brokerage in the NASD; (2) the Wunsch System's supplying to the Commission, on a quarterly basis, or on a more frequent basis, if deemed necessary, data describing: (a) The number and identity of participants that have signed participation agreements and of applicants that have been denied application, and the reasons for such denial; (b) the number of auctions conducted and the identity of securities included in each auction; (c) the prices at which particular blocks of securities were sold during the auction; (d) the number and volume of any transactions that fail to settle after an auction and the identity of defaulting parties; and (e) the daily dollar and share volume of business transacted through the system; (3) an undertaking by WASI to cooperate with any investigation of trading on the Wunsch System conducted by any self-regulatory organization ("SRO") or by the Commission, and to provide SROs and the Commission with any requested information pertaining to trading on the Wunsch System; and (4) the provision of 30 days prior notice of any material changes in the operation of the auction. The Commission, of course, reserves the right to apply further conditions as it deems necessary for the protection of investors and the public interest.

In light of the novelty of determining whether the Commission should grant WASI a limited volume exemption from registration as a national securities exchange under section 5 of the Act, the Commission requests comment on whether: (1) The Commission should grant WASI the exemption it seeks; and (2) if so, the conditions that should apply to such exemption.

V. Comment Period

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of all submissions filed with the Commission will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. All submissions should refer to the file number in the caption above and should be submitted by November 29, 1990.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR 90–25623 Filed 10–29–90; 8:45 am]

BILLING CODE 8010–01–M

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[15] Instinet letter, at 44–5. In 1989, the actual average daily share volume traded on the NYSE was 165.5 million shares; the average daily share volume traded on the NASD's automated quotation system ("NASDAQ") was 133.1 million shares.

[16] CBT letter, at 5.

[17] *See* CBOE letter, at 8.

[18] The Commission does not believe in this context (*i.e.*, an application for exemption submitted by a new exchange) that it is necessary to delineate comprehensive criteria for determining what is *de minimis*. Nonetheless, the Commission would at a minimum expect to revisit any exemption granted the Wunsch System if it achieves, on a regular basis, a share of NASDAQ or consolidated NYSE share or dollar volume in excess of the current share of active proprietary trading systems. Currently, Instinet's average daily volume, expressed in shares traded, is approximately 1.4 percent of the average daily volume of the NYSE; the average daily volume of trading in the Portfolio System for Institutional Trading ("POSIT") expressed in shares traded, is 1 percent of NYSE's average daily volume.

[Rel. No. IC–17818; 811–4284]

RNC Income Fund, Inc.; Application

October 24, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: RNC Income Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC. 450 5th Street, NW., Washington, DC 20549. Applicant, 10601 Wilshire Boulevard, Penthouse Floor, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Barabra Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephine M. Monaco, Branch Chief, at (202) 272–3030 (Office

of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or from the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. According to SEC records, Applicant, and open-end investment company organized under Maryland law, registered under the 1940 Act on April 23, 1985. On the same date, it filed a registration statement with respect to an indefinite number of shares under the Securities Act of 1933, which registration statement was declared effective on April 11, 1986.

2. On December 4, 1989, Applicant's board of directors approved the transfer of all assets of Applicant to ProvidentMutual Total Return Trust ("ProvidentMutual") in exchange for shares of ProvidentMutual. At a special meeting of shareholders of Applicant on May 29, 1990, the proposed asset purchase and Applicant's subsequent liquidation were approved.

3. On June 20, 1990, Applicant transferred substantially all of its assets to ProvidentMutual in exchange for ProvidentMutual shares based on the relative net asset values of Applicant and ProvidentMutual as of June 19, 1990. As of that date, Applicant had 560,378.438 shares outstanding and its net asset value per share was $9.1. Applicant's shareholders received the equivalent aggregate net asset value in shares of ProvidentMutual in return for all of Applicant's shares (approximately .762 ProvidentMutual shares for each of Applicant's shares).

4. RNC Capital Management Co., Applicant's investment adviser, paid approximately $10,000 in expenses incurred in connection with the reorganization and liquidation. Applicant incurred no other expenses.

5. Applicant intends to dissolve under Maryland law. Applicant retains no assets and has not further liabilities. Applicant is not a party to any litigation or administrative proceeding. Appplicant has no remaining shareholders.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant has filed a Form N–SAR for the six-month period ended March 31, 1990 reflecting the winding up of its operations.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25574 Filed 10–29–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17816; 811–4136]

RNC Regency Fund, Inc.; Application

October 24, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: RNC Regency Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 11601 Wilshire Boulevard, Penthouse Floor, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or from the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant, an open-end investment company organized under Maryland law, registered under the 1940 Act on October 25, 1984. On the same date, it filed a registration statement with respect to an indefinite number of shares under the Securities Act of 1933, which registration statement was declared effective on August 8, 1985.

2. On December 4, 1989, Applicant's board of directors approved the transfer of all assets of Applicant to ProvidentMutual Investment Shares, Inc. ("ProvidentMutual") in exchange for shares of ProvidentMutual. At a special meeting of shareholders of Applicant on May 29, 1990, the proposed asset purchase and Applicant's subsequent liquidation were approved.

3. On June 20, 1990, Applicant transferred substantially all of its assets to ProvidentMutual in exchange for ProvidentMutual shares based on the relative net asset values of Applicant and ProvidentMutual as of June 19, 1990. As of that date, Applicant had 624,350.228 shares outstanding and its net asset value per share was $15.89. Applicant's shareholders received the equivalent aggregate net asset value in shares of ProvidentMutual in return for all of Applicant's shares (approximately 1.826 ProvidentMutual shares for each of Applicant's shares).

4. RNC Capital Management Co., Applicant's investment adviser, paid approximately $10,000 in expenses incurred in connection with the reorganization and liquidation. Applicant incurred no other expenses.

5. Applicant intends to dissolve under Maryland law. Applicant retains no assets and has no further liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant has filed a Form N–SAR for the six-month period ended March 31, 1990 reflecting the winding up of its operations.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25575 Filed 10–29–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-17817; 811-4837]

RNC Westwind Fund, Inc.; Application

October 24, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: RNC Westwind Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on August 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicant, 11601 Wilshire Boulevard, Penthouse Floor, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or from the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. According to SEC records, Applicant, an open-end investment company organized under Maryland law, registered under the 1940 Act on September 11, 1986. On the same date, it filed a registration statement with respect to an indefinite number of shares of its initial series, RNC Westwind Fund (the "Westwind Series") under the Securities Act of 1933, which registration statement was declared effective on December 8, 1986. Applicant filed a post-effective amendment registering an indefinite number of shares of a second series, RNC Short/Intermediate Government Securities Fund (the "Government Series"). The post-effective amendment became effective on July 11, 1988.

2. On December 4, 1989, Applicant's board of directors approved the transfer of all assets of the Westwind Series to Provident Mutual U.S. Government Fund ("Total Return") and the transfer of all assets of the Government Series to ProventMutual U.S. Government Fund For Income, Inc. ("U.S. Fund") in exchange for shares of Total Return and U.S. Fund. At a special meeting of shareholders of each of the Westwind Series and of the Government Series on May 29, 1990, the proposed asset purchases were approved.

3. On June 20, 1990, the Westwind Series transferred substantially all of its assets to Total Return in exchange for Total Return shares based on the relative net asset values of the Westwind Series and Total Return. The Government Series transferred substantially all of its assets to U.S. Fund in exchange for shares of U.S. Fund based on the relative net asset values of the Government Series and of U.S. Fund. The net asset values were determined as of June 19, 1990. As of that date, the Westwind Series had 355,152.891 shares outstanding, the Government Series had 116,070.059 shares outstanding, and their net asset value per share was $11.28 and $9.97 respectively. Shareholders of each of Applicant's series received the equivalent aggregate net asset value in shares of Total Return or of U.S. Fund in return for all of each series' outstanding shares (approximately .944 Total Return shares for each Westwind Series share and approximately .86 U.S. Fund shares for each Government Series share).

4. RNC Capital Management Co., Applicant's investment adviser, paid approximatley $10,000 in expenses incurred in connection with the reorganization and liquidation of each series, totalling $20,000. Applicant incurred no other expenses.

5. Applicant intends to dissolve under Maryland law. Applicant retains no assets and has no further liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant has no remaining shareholders.

6. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant has filed a Form NSAR for the six-month period ended March 31, 1990 reflecting the winding up of its operations.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-25573 Filed 10-29-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Dawn Air, Inc.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90-10-38, order to show cause.

SUMMARY: The Department of Transportation is proposing to find Dawn Air, Inc., fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their response with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: October 24, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-25618 Filed 10-29-90; 8:45 am]

BILLING CODE 4910-26-M

Federal Aviation Administration

Proposed Advisory Circular 120-XX; Air Carrier Internal Evaluation Programs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 120-XX, and request for comments.

SUMMARY: This proposed AC describes the process of voluntary disclosure of infractions of the Federal Aviation Regulations (FAR) and the establishment of internal evaluation programs for use by FAR part 121 and part 135 certificate holders.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Send all comments on the proposed AC to Federal Aviation Administration, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Potter, AFS–201, at the above address, telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "FOR FURTHER INFORMATION CONTACT." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120–XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Air Transportation Division before issuing the final AC.

The Proposed Advisory Circular

The adoption of the Air Carrier Internal Evaluation Program as a part of the FAA's compliance and enforcement policy was announced by Administrator James Busey on March 27, 1990. Since that announcement, the agency has developed detailed implementing procedures and has conducted training of safety inspectors from every FAA region. The draft AC has been developed to advise certificate holders of the procedures for voluntary disclosure of infractions of the regulations, development of a company internal evaluation program, and coordination with the FAA on inspection, recordkeeping, and reporting of information. The FAA Office of the Chief Counsel has not completed its review of the draft at this time, and the draft is not considered final. A working draft of the proposed AC is being made available for public review and comment in order to expeditiously obtain the fullest public input in development of the final document. While the final version of the AC will continue to reflect the general policy announced on March 27, specific provisions of the working draft now available may be changed in the final version. Comments are specifically requested on the practicality of the procedures described in the draft and the clarity of the terminology and provisions used.

Issued in Washington, DC, on October 23, 1990.

Thomas C. Accardi,

Acting Director, Flight Standards Service.

[FR Doc. 90–25611 Filed 10–29–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 90–83]

Suspension of Individual Broker's License No. 4900; Kay Bennett

AGENCY: U.S. Customs Service, Department of the Treasury.

AGENCY: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on July 26, 1990, in accordance with the settlement of the disciplinary proceedings instituted under 19 U.S.C. 1641 by the U.S. Customs Service on July 1, 1989, suspends the individual broker's license (No. 4900) issued to Kay Bennett for a period of 150 days.

Dated: October 23, 1990.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 90–25589 Filed 10–29–90; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 8 percent for calendar year 1991.

DATES: The rate will be in effect for the period beginning on January 1, 1991 and ending on December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division (Program Compliance Branch), Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: (202) 287–0745).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the 12-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on the moving basis, changes by 2 per centum. The rate in effect for calendar year 1991 reflects the average investment rates for the 12-month period ended September 30, 1990.

Dated: October 19, 1990.

Michael T. Smokovich,

Assistant Commissioner, Federal Finance.

[FR Doc. 90–25635 Filed 10–29–90; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Conversion of Federal Supply Schedule Item, Hospital Stretcher (Adjustable Back Rest), From a Multiple Award Schedule to a Single Award Schedule

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that Department of Veterans Affairs (VA) is proposing to convert a Hospital Stretcher (adjustable back rest) currently under Federal Supply Schedule Group 65, part II from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS).

DATES: Written comments must be received on or before November 29, 1990, and should include consideration of potential impact on small business concerns. Comments will be available for public inspection until December 10, 1990.

ADDRESSES: Interested persons are invited to submit written comments suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans

Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8:30 a.m and 4:30 p.m., Monday through Friday, (except holidays), until December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Pat Rhoades, Customer Service Division (904C), Department of Veterans Affairs Marketing Center (708) 216–2478.

SUPPLEMENTARY INFORMATION: The item proposed for conversion from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS) is: Hospital Stretcher (adjustable back rest). This proposed action is published in accordance with General Services Administration Handbook, Supply Operations, chapter 38 (FSS P2901.2A), and Federal Acquisition Regulation (FAR) 38.2.

Dated: October 18, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–25668 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 82–90; Congenital/Developmental Conditions Under 38 CFR 3.303(c)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—In view of the provisions of 38 CFR 3.303(c), under what circumstances, if any, may service-connection be granted for disorders of congenital or developmental origin?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion I–85, dated March 5, 1985, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 82–90, Congenital/Developmental Conditions under 38 CFR 3.303(c), requested by Chairman, Board of Veterans Appeals, is as follows:

Held: Service-connection may be granted for diseases (but not defects) of congential, developmental or familial origin. In the instant cases, service connection is warranted if the evidence as a whole establishes that the familial conditions in question were incurred or aggravated during service within the meaning of VA law and regulations.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25540 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 83–90; Course Substitution by Institutions

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does 38 U.S.C. 1782, which bars the VA from exercising supervision or control over any educational institution or State approval agency, prohibit the VA from questioning the reasonableness of course substitutions approved by either? If not, may the VA withhold benefit payments in such cases?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW; Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issued but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 12–83, dated September 20, 1983, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format the clerical changes necessitiated by the aforementioned regulatory provisions.)

VA published summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 83–90, Course Substitution By Institutions, requested by Chief Benefits Director, is as follows:

Held: (1) The VA has the authority to independently determine that the courses or subject approved by the state approval agency (SAA) and which constitute the veteran's program of education lead to an identified professional, vocational or educational objective. If they do not, no benefits for such courses or subjects may be paid, unless they may properly form the basis of a different program of education and the veteran meets all criteria for an appropriate change of program.

(2) Only the veteran may seek a change of program and he or she must do so affirmatively by making application to the VA.

(3) The school may not, in any case, independently exercise the veteran's right to an optional change of program.

(4) The VA will not pay benefits to a veteran for any portion of training received in a new program of education unless an application for the change of program is received within 1 year of the actual training, just as in any other case for which the beneficiary is required to apply.

(5) Applications by a school to a SAA for approval of a new course must be in writing only if the course is nonaccredited. In all other cases the existing law and regulations would seem to permit the SAA to entertain in informal application such as submission by the school of a revised catalogue listing different unit courses or subjects than were submitted for the original approval. We are of the opinion, however, that the SAA can and should require written applications.

(6) If a school or the SAA delays requesting or approving a course (so that the VA does not receive the approval within 60 days of the effective date of the approval), under existing rules and regulations the VA may only pay benefits from the date VA receives the notice of approval from the SAA, even thought the approval is made effective by the SAA for an earlier date, except when a waiver is granted by the VA for the delay. The date of receipt of the notice of approval would always be later than the effective date of the approval in such cases. If a waiver of dely in notifying the VA is granted, the VA may pay from the effective date of the approval as determined by the SAA.

(7) The existing regulations regarding such a waiver do not impose a specific period of delay (from the date the SAA determines to be the effective date of approval until the VA is notified) which would be considered inordinate, but, rather, impose an equitable test of good faith of the parties. A revised regulation could set a specific period of delay beyond which no waiver would be allowed, however. We would suggest 1 year would be a reasonable rule.

Dated: August 27, 1990.

Raoul L. Carrol,

General Counsel.

[FR Doc. 90-25541 Filed 10-29-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 84-90; Statute of Limitation on Education Loan

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—When does the statute of limitations start to run on education loans?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 5-81, dated August 6, 1981, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 84-90, Statute of Limitation on Education Loan, requested by Chief Benefits Director, is as follows:

Held: The cause of action in the case of a defaulted education loan accrues on the date of default. DVB Circular 20-78-44 places the date of default at 30 days after the date of the second request to the borrower. Therefore, the statute of limitations begins to run 30 days after the date of FL 4-322 to the veteran. It should be noted that a payment on the loan after the default date tolls the statute and starts it running again.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-25542 Filed 10-29-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 86-90; Entitlement to Service-Connected Disability Benefits for Heart Attack Sustained During Inactive Duty Training

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does a myocardial infarction, sustained during the course of mandatory heavy exertion during inactive duty training, constitute "an injury" within the meaning of 38 U.S.C. 101(24) so as to establish incurrence of a disability during such duty, or aggravation by injury of a preexisting disorder?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 1–81, dated February 9, 1981, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 86–90, Entitlement to Service-Connected Disability Benefits for Heart Attack Sustained during Inactive Duty Training, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: The question presented [Does a myocardial infarction, sustained during the course of mandatory heavy exertion during inactive duty training, constitute "an injury" within the meaning of 38 U.S.C. 101(24) so as to establish incurrence of a disability during such duty, or aggravation by injury of a preexisting disorder?] is answered in the negative.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25544 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 76–90, Income From Lands Held in Trust by Federal Government for Indian Tribes—Countability for VA Pension Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Whether income from lands held in trust by the Federal Government for a veteran as a member of an Indian tribe should be counted as income for improved pension and section 306 pension purposes, and (2) whether such lands should be considered as part of the veteran's net worth for pension purposes.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 8–87, dated October 2, 1987, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated OG.C. Prec. 76–90, Income from Lands Held in Trust by Federal Government for Indian Tribes—countability for VA Pension Purposes, requested by Chief Benefits Director, is as follows:

Held: The veteran's rental income from land held in trust by the Federal Government for the veteran as a member of an Indian tribe must be included as "income" under 38 U.S.C. 503(a), but that trust itself, pursuant to 38 U.S.C. 1408, is an excludable resource for purposes of determining the veteran's net worth under 38 U.S.C. 522(a). In view of the similarity between the improved pension and section 306 pension statutes as they apply to this issue, and the unrestricted scope of section 1408, the same result would apply under the section 306 pension program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25534 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 77–90; Period of Eligibility for Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—When does a grant of service connection for a disability on a secondary basis establish a new period of eligibility to apply for Service Disabled Veterans (RH) Insurance (SDVI)?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 5–87, dated July 27, 1987, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 77–90, Period of Eligibility for Insurance, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: In accordance with the language of 38 U.S.C. 722(a), its legislative history, and the pertinent regulations and their development, we conclude that a finding of service connection for a secondary disability establishes a new period for filing an application for insurance under that section. This is so even if the newly recognized disability is a result of the same disease responsible for earlier-manifested, different disabilities. In the instant case, the October 1983 rating awarded service connection for a "disability" (visual impairment) not previously service connected, and, accordingly, established a new period of eligibility for the veteran to apply for SDVI.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25535 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 81–90, Review of Opinions Concerning Mineral Lease Proceeds

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether royalty and other payments associated with a mineral lease represent income of the lessor for pension purposes.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Libarary, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 3–85, dated June 19, 1985, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 81–90, Review of Opinions Concerning Mineral Lease Proceeds, requested by Waco District Counsel, is as follows:

Held: Mineral lease royalties must be considered proceeds of the sale of property and are properly excludable from income for pension purposes. However, such payments are relevant to evaluation of the corpus of a claimant's estate for purposes of the net worth limitation in the pension statutes. Also, bonus payments and delay rentals received in connection with a mineral lease must be considered income of the lessor for pension purposes.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25539 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 79–90, Offset of Survivors' Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether the amount of dependency and indemnity compensation (DIC) to be withheld pursuant to 38 U.S.C. 351 to offset a tort recovery against the United States for a veteran's death is dependent on the legal status in which the tort claimant recovers.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810

Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 1–87, dated November 14, 1986, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 79–90, Offset of Survivors' Benefits under 38 U.S.C. 351, requested by Baltimore District Counsel, is as follows:

Held: The legal status under which a claimant recovers on a claim under the FTCA based on death is relevant to determination of the amount to be offset from DIC benefits pursuant to 38 U.S.C. 351. Such status will generally be dependent on the nature of the damages recovered. Amounts recovered by an individual under a typical wrongful-death statute may be offset against DIC otherwise payable to that individual, even if damages are actually paid to a nominal party as trustee for the survivors. Each survivor receiving damages under a wrongful-death statute is subject to offset only to the extent of sums included in the judgment or settlement to compensate for harm suffered by that individual. Damages recovered by a personal representative under a survival statute are not subject to recovery by offset under section 351, although the personal representative to whom payment is made may be the surviving spouse of the decedent. We will advise personnel of the Office of the General Counsel responsible for FTCA matters of the need for specificity in FTCA judgments and settlements to identify the capacities in which claimants receive damages and the sums awarded to each party.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25537 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 85–90, Waived Income for Pension Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Departmentof Veterans Affairs (VA) is publishing a summary of legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claims matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does a withdrawn application for Social Security benefits constitute a waiver of income?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–81, dated April 22, 1981, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinion, with personal identifiers deleted, may obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 85–90, Waived Income for Pension Purposes, requested by Chief Benefits Director, is as follows:

Held: The withdrawal of a Social Security application after a finding of entitlement, under circumstances indicating that the purpose of such withdrawal is to maintain eligibility for an unreduced Social Security benefit upon attainment of a certain age, should not be regarded as a waiver under section 503(a) nor should the Social Security benefit that would be received but for the withdrawal be counted as income for purposes of the Improved Pension program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25543 Filed 10–29–90; 8:45 am]

BILLING CODE 3820–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 80–90, Interpretation

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May the surviving spouse of a veteran entitled to receive disability compensation continuously at the 100-percent rate for 10 or more years under 38 U.S.C. 351, whose death was neither

service-connected nor due to the disability for which compensation was paid under section 351, qualify to receive Dependency and Indemnity Compensation (DIC) under 38 U.S.C. 410(b)(1)?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 5–86, dated January 31, 1986, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 80–90, Interpretation of 38 U.S.C. 410(b)(1) in Relation to 38 U.S.C. 351, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: The surviving spouse of a veteran entitled to receive disability compensation continuously at the 100-percent rate for 10 or more years under 38 U.S.C. 351, whose death was neither service connected nor due to the disability for which compensation was paid under section 351, may qualify to receive DIC under 38 U.S.C. 410(b)(1).

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25538 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 78–90, Effect of Veteran's Election to Receive Military-Retirement Pay on Surviving Spouse's Entitlement to DIC

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—The legal question presented is whether a surviving spouse is entitled to death benefits at the dependency and indemnity compensation (DIC) rates when the veteran's serivce-connected pulmonary tuberculosis was rated totally disabling by the VA more than 10 years before the veteran's nonservice-connected death, but the veteran had not received disability compensation due to an election to receive military-retirement pay. We are asked to consider, as a corollary question, whether the result would be different if the reason there had been no reduction in the veteran's disability rating prior to death had been Veterans Administration error in not conducting a physical examination since such examination might have concluded in diagnosis of "inactive" tuberculosis.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 4–87, dated July 17, 1987, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.).

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal indentifiers deleted, may be obtained by contracting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 78–90, Effect of Veteran's Election to Receive Military-Retirement Pay on Surviving Spouse's Entitlement to DIC under 38 U.S.C. 410(b), requested by Chairman, Board of Veterans Appeals, is as follows: HELD: In the case of a veteran who has elected to receive military-retirement pay in lieu of VA disability compensation, the VA is not authorized to pay DIC benefits to a surviving spouse merely on the basis of a 100% rating extant for 10 years immediately preceding death. Rather, the literal terms of 38 U.S.C. 410(b) necessitate that the VA make a posthumous determination whether the 100% rating was warranted "at the time of death," and for the requisite duration theretofore (ordinarily, 10 years).

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25536 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; New System of Records; Extension of Comment Period

AGENCY: Department of Veterans Affairs.

ACTION: Notice of extension of comment period.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the Federal Register a notice of the existence and character

of their systems of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of the addition of a new system of records entitled "Health Care Provider Credentialing and Privileging Records—VA" (77VA11), which appeared on pages 30790 through 30793 of the **Federal Register** of July 27, 1990 (55 FR 30790). The notice provided a 30-day comment period for this system of records which was to end on August 27, 1990. If no comments were received during that period of time, the routine uses in the system of records were to be effective on August 27, 1990. Due to comments received during the 30-day comment period and indications that many more individuals would like the opportunity to comment on a system of records which directly affects them, the VA is hereby providing notice that, while the rest of the system notice was effective upon publication on July 27, 1990, the routine uses set forth in the system of records will not be considered effective on August 27, 1990, and that the comment period is reopened and extended for an additional 30-day period. All written comments previously received will be considered and need not be resubmitted.

DATES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed routine uses contained in the system of records to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received on or before November 29, 1990, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays, until (Insert 40 days after date of publication in **Federal Register**).

Following the close of the extended comment period, the VA will publish a notice in the **Federal Register** addressing the comments received and setting forth the System of Records Notice in its entirety and an effective date for the routine uses therein.

FOR FURTHER INFORMATION CONTACT: Susan J. Brennan, Director, Professional Affairs, Office of the Assistant Chief Medical Director for Clinical Affairs, (202) 233–3118.

Approved: October 22, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90–25667 Filed 10–29–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 210
Tuesday, October 30, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 1, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301–492–6800.

Dated: October 25, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–25771 Filed 10–26–90; 1:33 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 22, 1990, 55 FR 42675.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 24, 1990, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to the Agenda scheduled for October 24, 1990:

Item No., Docket No., and Company

CAG–3—CP90–2154–000, RP85–177–088, RP88–67–039, RP89–255–002 and RP90–119–003, Texas Eastern Transmission Corporation

CAG–4—RP90–104–000 and RP88–115–000, Texas Gas Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 90–25805 Filed 10–26–90; 3:50 pm]

BILLING CODE 6717–01–M

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 43258—October 26, 1990.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: October 31, 1990—10:00 a.m.

CHANGE IN THE MEETING: Withdrawal of Item from the open session of the meeting.

Subject: Docket No. 90–06—*Notice of Inquiry—Marine Terminal Operator Regulations*—Consideration of Comments

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90–25788 Filed 10–26–90; 2:54 pm]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 24, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, October 25, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

CHANGES IN THE MEETING: The following item will not be considered by the Commission and the meeting is cancelled.

1. *Medusa Cement Company*, Docket No. SE 89–109–M. (Issues include whether the judge erred in concluding that Medusa Cement violated 30 CFR § 56.14211(d)).

It was determined by the Commission that this meeting should be cancelled and no earlier announcement of the cancellation was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 TDD.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–25791 Filed 10–26–90; 3:03 pm]

BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 24, 1990.

TIME AND DATE: 10:00 a.m., Thursday, November 1, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Joseph G. Delisio v. Mathies Coal Company*, Docket No. PENN 89–8–D. (Issues include whether the judge erred in sustaining Delisio's complaint of discrimination filed pursuant to Section 105(c) of the Mine Act. 30 U.S.C. 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–25792 Filed 10–26–90; 3:03 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 5, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25800 Filed 10–26–90; 3:31 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, November 6, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th &

Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 31562, *Union Pacific Railroad Company and Missouri Pacific Railroad Company—Trackage Rights Over Lines of Chicago and North Western Transportation Company Between Fremond, NE/Council Bluffs, IA and Chicago, IL*

Docket No. 39639, *Vulcan Materials Company v. Alton and Southern Railroad Company, et al.* and Docket No. 39812, *Vulcan Materials Company v. Alton and Southern Railroad Company, et al.*

Docket No. AB–12 (Sub-No. 118X), *Southern Pacific Transportation Company—Exemption—Abandonment of Service in San Mateo County, CA*

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252 TDD: (202) 275–1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25628 Filed 10–25–90; 1:22 pm]

BILLING CODE 7035–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Meeting

TIME AND DATE: 10:00 a.m., Monday, November 5, 1990.

PLACE: Filene Board Room, 7th Floor, 1776, G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Office Space Evaluation. Closed pursuant to exemptions (2) and (9)(B).

2. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90–25753 Filed 10–26–90; 1:08 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Thursday, November 1, 1990.

PLACE: Conference Room 8A, B, C, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Aviation Accident Report: United Airlines DC–10 Accident, Sioux City, Iowa, July 19, 1989.

News Media Contact: Ted Lopatkiewicz 382–6600

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: October 26, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–25754 Filed 10–26–90; 1:09 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 29, November 5, 12, and 19, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 29

Monday, October 29

10:00 a.m.
Briefing on Issues Raised by the Provision Requiring Title Transfer of Low Level Waste (Public Meeting)

Tuesday, October 30

10:00 a.m.
Briefing on Nonprescriptive Nuclear Safety Regulation (Public Meeting)

Wednesday, October 31

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 5—Tentative

Thursday, November 8

10:00 a.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of November 12—Tentative

Friday, November 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 19—Tentative

Wednesday, November 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: November 25, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–25782 Filed 10–26–90; 2:23 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 29, 1990.

A closed meeting will be held on Tuesday, October 30, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A), and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 30, 1990, at 2:30 p.m., will be:

Formal orders of investigation.

Regulatory matter regarding financial institution.

Institution of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.
Settlement of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272–2300.

Dated: October 25, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–25747 Filed 10–26–90; 1:07 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
October 30, 1990

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571, et al.

Federal Motor Vehicle Safety Standards; Side Impact Protection; Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-06; Notice 6]

RIN 2127-AB86

Federal Motor Vehicle Safety Standards; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 214, *Side Door Strength*, to upgrade its test procedures and performance requirements for passenger cars. For many years, the standard has measured performance statically in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door. These amendments require in addition that each passenger car must protect its occupants in a full-scale dynamic crash test in which the car is struck on either side by a moving deformable barrier simulating another vehicle. Instrumented test dummies are positioned in the target car to measure the potential for injuries to an occupant's thorax and pelvis.

Two alternative compliance schedules are established, the choice of which is at the option of the manufacturer Under one, the requirement will be phased-in by an annually increasing percentage of each manufacturer's production over a three-year period beginning on September 1, 1993, with full implementation effective September 1, 1996. Under the other, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994. In separate notices in today's **Federal Register**, the agency is establishing specifications for the new side impact test dummy and moving deformable barrier, as well as reporting requirements related to compliance with the phase-in of the new side impact requirements.

DATES: The amendments made by this rule to the text of the Code of Federal Regulations are effective November 29, 1990. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 29, 1990.

PERCENT COMPLIANCE REQUIRED DURING PRODUCTION YEAR BEGINNING

	Schedule one (percent)	Schedule two (percent)
9/1/93	10	0
9/1/94	25	100
9/1/95	40	100
9/1/96	100	100

Petitions for reconsideration of this final rule must be filed by November 29, 1990.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW.,Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Vehicle Safety Standards, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-0842).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

NHTSA's current standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength* (49 CFR 571.214) The standard specifies performance requirements for each side door in a passenger car, to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door to resist crush forces that are applied by a piston pressing a steel cylinder inward against the door's outside surface in a laboratory test. The standard does not attempt to regulate directly the level of crash forces on an occupant who strikes or is struck by the car's interior during a side impact crash. Since the standard became effective on January 1, 1973, vehicle manufacturers have generally chosen to meet its performance requirements by reinforcing the side doors with metal beams.

NHTSA's analysis of real-world crash data has shown that the strengthening of the side doors with metal beams is indeed effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214" (DOT HS 806-314), estimated that 480 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car collisions.

Because of the large number of fatalities and injuries which continue to result from side impact crashes, the agency initiated a research program to upgrade the current standard. This effort focused primarily on thoracic protection, since data indicate that contact between the thorax and the side interior is a major source of serious injuries and fatalities.

The agency has conducted research on improved side impact protection since the late 1970's. Much information has been acquired not only from agency research but also from industry and research groups throughout the world. The agency has presented its findings and has communicated with groups in

numerous meetings and conferences such as Society for Automotive Engineers (SAE), Stapp Car Crash Conferences, Experimental Safety Vehicle Conferences (ESV), International Research Council on Biokinetics of Impacts (IRCOBI), and NHTSA sponsored public meetings (1979 and 1986). NHTSA has sought to address pertinent aspects of the side impact protection issue, which cover the test procedure, side impact dummy, injury criteria, and characteristics of those crashes as they occur in the real world.

Based on that research, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2240), a notice of proposed rulemaking (NPRM) to upgrade the standard by using a test procedure which simulates a two-vehicle side crash representative of an injurious side crash. The proposed test uses a moving deformable barrier (MDB), weighing approximately 3,000 pounds, to represent a vehicle which is traveling at 30 mph and strikes the side of another vehicle which is traveling at 15 mph. To measure the magnitude of the threat of injury resulting from the side impact collision, the agency proposed to use a specially developed side impact dummy (SID). NHTSA proposed to use two of these dummies in a test, with one being placed on the front outboard seat and the other on the rear outboard seat, on the struck side of the car. The agency proposed specifications for the SID in a separate NPRM issued at the same time as the NPRM to upgrade Standard No. 214 (53 FR 2254).

NHTSA stated that its side impact proposal would complement the existing standard, which is primarily effective in single vehicle side impact accidents, by providing additional protection in multi-vehicle side impacts. As indicated above, the existing standard does not directly assess the injury probabilities associated with different vehicle designs in a specific impact, but instead uses the ability of the side doors to resist intrusion as a surrogate measure of the potential for injury.

In the NPRM, the agency proposed to establish specific performance criteria which must be met to reduce the possibility of thoracic side impact injuries without increasing harm to the pelvis. The notice proposed to require passenger cars not to exceed specified performance limits for the thorax and the pelvis. For the thorax, the proposed performance limit used an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. NHTSA requested comments on the appropriateness of setting a TTI(d) limit ranging from 80 to 115 g's (where "g" is defined as the acceleration due to gravity). In addition, the notice requested comments on the appropriateness of setting limits, ranging from 130 to 190 g's, on the peak acceleration that the pelvis should experience during the impact. Finally, to reduce the possibility of occupant ejection, the agency proposed to require that each door in the struck vehicle remain closed during the crash test.

To provide manufacturers with sufficient leadtime to design their passenger cars to meet the proposed performance requirements, NHTSA proposed to phase-in the new requirements in accordance with the following implementation schedule:

10 percent of each manufacturer's cars manufactured during the first full production year (September 1 to August 31) beginning more than 24 months after the issuance of the final rule;

25 percent of each manufacturer's cars manufactured during the second full year beginning after that 24-month period;

40 percent of each manufacturer's cars manufactured during the third full year after that 24-month period; and

All cars manufactured on or after the beginning of the fourth full year after that 24-month period.

In addition to issuing the January 1988 NPRM to improve thoracic protection in passenger car side impacts, NHTSA has also, during the past several years, been involved in several other efforts to improve side impact protection. These efforts cover both passenger cars and light trucks, vans and multipurpose passenger vehicles (MPV's).

On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the side protection of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to improve side impact protection for light trucks, vans and MPV's (collectively referred to as "LTV's") largely correspond to its efforts for passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31716) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. In summary, the ANPRM addressed: (1) Extension to LTV's of Standard No. 214's existing requirements, i.e., measuring performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, corresponding to those addressed in the August 1988 ANPRM for passenger cars.

On December 22, 1989, NHTSA published in the **Federal Register** (54 FR 52826) an NPRM to extend the existing requirements of Standard No. 214 to LTV's. Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, the agency was the furthest advanced in analyzing the extension of Standard No. 214's existing requirements to those vehicles As indicated in the NPRM, NHTSA decided to go forward with rulemaking on that issue separately, since addressing all of the potential requirements together could result in unnecessary delays.

II. Public Comments on the January 1988 NPRM

NHTSA received comments from auto manufacturers, manufacturer organizations, consumer groups, insurance organizations, governmental organizations, international organizations, and private individuals. A brief summary of the most significant public comments is provided in this section. Subsequent portions of the preamble discuss the issues and present the agency's position and response to the public comments. The comments are discussed at greater length in those sections of the preamble. Because of the large number of public comments, NHTSA has provided, throughout the preamble, a representative sample of the comments made and the commenters who made them. Some of the comments relate to more than one issue. The agency analyzes and responds to the comments in more detail in its Final Regulatory Impact Analysis (FRIA), which is being issued along with this final rule.

Auto manufacturers unanimously opposed adoption of the proposed side impact requirements, challenging numerous aspects of the proposed performance requirements and test procedure. The auto manufacturers argued against adoption of the TTI(d) injury criterion. A number of manufacturers argued that TTI(d) cannot reliably predict thoracic injury

risk in a crash because it lacks a biomechanical basis and is test-condition-dependent. Some manufacturers argued that TTI(d) is fundamentally flawed because it is acceleration-based and does not take thoracic compression into account. Several manufacturers argued that the use of TTI(d) could lead to designs which provide little or no safety benefit, or even degrade occupant safety by leading to the installation of padding that is overly stiff.

Numerous manufacturers argued that NHTSA should regulate side impact protection by means of component tests instead of a full scale crash test. Those commenters argued that component tests would be less expensive to conduct, could be utilized early in the design stage of a vehicle, and would promote international harmonization.

Manufacturers also presented numerous objections to the proposed SID and MDB. The agency notes that while it proposed specifications for the MDB as part of its primary side impact NPRM, the MDB is covered in a separate notice for purposes of a final rule. Therefore, comments concerning the MDB are addressed in that notice. Similarly, comments on the NPRM concerning the SID are addressed in the SID final rule.

The Insurance Institute for Highway Safety (IIHS) stated that it strongly supports the agency's proposal, including specification of a full scale crash test and use of TTI(d). That commenter argued that the proposed amendment is an important and long overdue first step toward the larger goal of reducing all types of serious injuries in side impacts. The American Insurance Association stated that it supports NHTSA's efforts to improve side impact protection and urges promulgation and implementation of a final rule as quickly as possible.

The Center for Auto Safety and Public Citizen argued that the proposed requirements are not sufficiently stringent. Those commenters argued that NHTSA should have considered much more stringent alternatives, such as 60 degree impact angles, higher impact masses, and higher speeds. They also opposed the phase-in of the requirements.

On October 19, 1989, 19 members of the Senate Committee on Commerce, Science and Transportation sent a letter to Secretary Skinner urging action on the proposed side impact rulemaking. The letter noted the history of NHTSA's rulemaking on side impact protection, including issuance of the January 1988 NPRM. The letter stated:

> The full Senate recently passed, without opposition, legislation to require DOT rulemakings to improve side-impact protection in passenger automobiles, and to extend that standard to minivans and light trucks. Mr. Secretary, this is a basic protection that should be afforded to all Americans, no matter what type of passenger vehicle they drive. NHTSA has gained valuable information over the past ten years on ways to improve side-impact protection. Further, the Department has the authority to require these improvements. We urge you to move forward now with a rulemaking to improve side-impact protection in passenger cars, light trucks and minivans.

III. Summary of the Final Rule

After a thorough review of the issue of side impact protection, including the comments on the NPRM and extensive studies, analyses, and data on the subject, NHTSA has decided to adopt a final rule based on its January 1988 proposal. NHTSA has decided to adopt TTI(d) limits of 85 g for 4-door cars and 90 g for 2-door cars. The pelvic acceleration limit is being set at 130 g for all cars. The requirements apply both to front and rear seats.

The performance levels established in this rule will achieve the optimum level of safety consistent with the statutory requirements for a safety standard. The levels will protect motor vehicle occupants against an unreasonable risk of injury in a side crash, while ensuring that the countermeasures necessary to achieve these levels are practicable. The agency expects considerable reductions in side impact fatalities and injuries to accrue because of this rule. As in other rulemaking evaluations, NHTSA will carefully monitor the benefits associated with this rule. Based on the performance of vehicles in laboratory crash tests, injury risk reductions determined from real-world crash data, improvements in available countermeasure technology and other factors, NHTSA will determine whether further rulemaking concerning side impact crash protection is warranted.

Two alternative compliance schedules are established, the choice of which is at the option of the manufacturer. Under the first schedule, each manufacturer will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles it manufactures during the 12 month period beginning September 1, 1993;

25 percent of automobiles it manufactures during the 12 month period beginning September 1, 1994;

40 percent of automobiles it manufactures during the 12 month period beginning September 1, 1995; and

All automobiles it manufactures on or after September 1, 1996.

Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

The rear seat requirements will not apply to cars which have rear seating areas that are so small that the SID dummy cannot be accommodated according to the specified positioning procedures. Only a very small number of sport cars are believed to be in this category. NHTSA has also decided not to apply the rear seat requirements to passenger cars with a wheelbase greater than 130 inches, since the rear seats are so far back from the MDB impact point that the side impact protection provided for those seating positions cannot appropriately be evaluated by the test procedure. The wheelbases of all production passenger cars are less than 130 inches, so this will only affect the rear seats of stretch limousines.

The bases for the agency's decision, and its response to the comments, are set forth below.

IV. The Safety Problem

NHTSA has separately analyzed the fatality and injury experience of passenger car occupants involved in side impact crashes. As discussed below, the data show that side impacts account for an average of almost 8,000 fatalities and more than 24,000 serious injuries, annually. These figures represent 30 percent of all passenger car occupant fatalities and 34 percent of the serious injuries that occur in passenger cars.

A. Fatalities.

NHTSA reviewed available crash data from 1978 to the present to determine the number of fatalities in side impact crashes. That review showed that side impacts resulted in an average of 7,730 fatalities per year over that period. The review further showed that, while side impact fatalities declined steadily from about 8,300 in 1978 to about 7,000 in 1982, they increased again to about 8,000 in 1986 and 7,900 in 1987. The percentage of side impact fatalities as a percentage of all occupant fatalities averaged 30.6 percent over this ten year period. That percentage remained fairly constant from 1978–1982, at about 29 percent, but has averaged 32 percent since 1983.

The agency also examined the data on fatal crashes to identify the first harmful event in fatal side impact accidents. Based on a review of data from crashes in 1982–1987, the agency found that 67 percent of all side impact fatalities result from vehicle-to-vehicle side

impacts. Pole type impacts (poles, posts, fire hydrants, and trees) result in an additional 18 percent, and impacts with other fixed objects (boulders, culverts, embankments, bridge abutments, guard rails, etc.) together comprise approximately 10 percent of all side impact fatalities.

The agency also examined its data files to determine what areas of the body were being injured in side impacts. Since the Fatal Accident Reporting System (FARS) does not provide information on the body region injured or the injury contact points, the agency examined data from the 1979–1987 National Accident Sampling System (NASS) and the 1977–1979 National Crash Severity Study (NCSS) on fatalities in which the most severe damage to the fatality victim's vehicle was a left side or right side deformation. Only model year 1973 and later vehicles were included in this analysis, to ensure that the data reflected the effect of side door beams, which were required by NHTSA beginning January 1, 1973, and appeared in many cars prior to that date. The data show that, for all types of side impact accidents including occupant ejections, head injuries are the most frequent sources of side impact fatalities (45%), followed by chest (29%), neck/spine (11%), and abdominal injuries (9%).

While head injuries are the most prevalent cause of side impact fatalities, NHTSA is aware that those injuries are not significantly addressed by this final rule. This rulemaking addresses thoracic and pelvic injuries, which are a large percentage of side impact fatalities and injuries, because the agency is further along in developing countermeasures to protect these body regions than it is in developing means of protecting the head. The agency is addressing head protection in a separate rulemaking. On August 19, 1988, NHTSA published in the Federal Register (43 FR 31712) an advance notice of proposed rulemaking that addressed head protection.

The performance test set forth in today's final rule simulates a lateral impact on a flat surface without ejection or rollover. Injuries to the chest and abdomen from contacting side surfaces are the major injury categories in this type of side impact crash. About 26 percent of side impact fatalities are relevant to the new performance requirements. This percentage includes only those cases where the chest or abdomen contacting the side interior or side hardware/armrest is the most severe injury. The requirements should also help reduce head and other injuries resulting from ejections, since the requirement that all doors of a tested car remain closed during the crash test will reduce the possibility of ejection in an actual crash.

B. Injuries

In addition to examining the data on side impact related fatalities, the agency also reviewed data on the number of injuries in non-fatal side impact crashes. NHTSA estimated the average number of injuries, by deformation location and the maximum Abbreviated Injury Scale (AIS) level per survivor occupant, that would have occurred in 1982–87 if all cars in the fleet were MY 1973 and later cars—that is, if they all had side door beams. (The Abbreviated Injury Scale is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal.) The total estimated number of AIS 3–5 injuries (serious to critical injuries) to passenger car occupants from all crash modes is about 68,600 annually, based on data from the 1982–87 NASS file. That analysis showed that side impacts resulted in a total of about 24,400 AIS 3–5 injuries annually, or 35.6 percent of all AIS 3–5 injuries. This percentage is slightly higher than the percentage of side impact fatalities (31.6 percent) in the same six years. The analysis also showed that the side interior and side hardware/armrests accounted for 53 percent of the maximum AIS 3–5 injuries to front seat occupants sitting near the struck side of the vehicle, and for 68 percent of the maximum AIS 3–5 injuries to rear seat occupants sitting near the struck side of the vehicle.

V. Performance Requirements

A. Thorax

1. TTI(d) Performance Criterion

To assess the probability of an injury to the thorax in a side impact, NHTSA developed a new injury measure called the Thoracic Trauma Index (TTI). The TTI is a formula which can be used to predict the probability of injury for persons of different ages and weights. It uses the age and weight of each test subject, along with the average of the lower thoracic spine and upper or lower rib accelerations. (For rib accelerations, the higher of the acceleration responses from the upper and lower ribs is used.)

The TTI was developed from and evaluated with test data obtained from a sample of 84 cadaver tests conducted over a 10-year period. The results of those tests represent the largest biomechanical data base that has been used to support a NHTSA rulemaking action. In these instrumented cadaver tests, NHTSA was able to compare the acceleration measured on the cadaver's ribs and spine with the severity of the thoracic injury received by the cadaver during the impact. These tests showed that the occurrence of injuries to the hard thorax, which includes both the ribs and the internal organs protected by the ribs, is strongly related to the average of the peak lateral acceleration experienced by the struck side rib cage and the lower thoracic spine.

TTI can be measured on a test dummy and used as a surrogate for side impact safety performance of passenger cars. Performance requirements for such performance can be specified in terms of a combination of peak rib and spine accelerations measured on the dummy and called the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. The benefits associated with a requirement specifying a particular level of TTI(d) can be predicted by using the TTI to assess changes across the entire population of vehicle occupants.

Included in the 84 cadaver tests mentioned above were a number of tests at the University of Heidelberg that were sponsored by the Forschungsvereinigung Automobiltechnik (FAT), an association of some 30 German motor vehicle and equipment manufacturers. These tests were designed to study lateral impacts to human cadavers, as well as to three different designs of dummies, seated in actual car bodies. Using the cadaver injury data, NHTSA evaluated the performance of the TTI in predicting the severity level of injuries resulting from lateral impacts.

In the FAT tests, which were conducted on a sled, a deformable barrier developed under the auspices of the Committee of Common Market Automobile Constructors (CCMC) was propelled into an Opel Kadett "body in white" in which the test subject (a human cadaver) was seated in the front seat on the struck side. Each car body was struck twice at an angle of 90°, once on the left side, and once on the right side. The speed of the barrier was either 40, 45, 50, or 60 km/hr. Each cadaver was subjected to one crash test. NHTSA's review of the test results, which is contained in the Society of Automotive Engineers paper entitled "Side Impact—The Biofidelity of NHTSA's Proposed ATD and Efficacy of TTI" (SAE Paper No. 861877, Oct. 1986) again showed that TTI effectively distinguished different levels of injury

risk. That is, the higher the value of the TTI calculated for the test, the greater was the probability of serious injury to the cadaver.

Despite the extensive support provided by NHTSA for TTI(d) in the NPRM and PRIA, numerous commenters expressed significant concerns about the proposed thoracic injury criterion. Some commenters argued that NHTSA has not demonstrated a good correlation between the TTI and the risk of injury. Peugeot expressed concern about NHTSA's use of data from cadaver tests performed by FAT. That commenter stated that it was evident that a given TTI value could be associated with any "hard thorax" AIS value, ranging from 0 to 5. Peugeot also stated that there was very poor correlation with either abdominal injuries or rib cage injuries. CCMC submitted a comment raising a number of the same concerns as Peugeot.

Honda commented that while NHTSA argued that TTI is able to distinguish injury level according to AIS, an International Organization for Standardization (ISO) document reveals that TTI data overlap different AIS's. Honda cited an ISO resolution concluding that the TTI cannot be considered as an acceptable thoracic protection criterion.

GM stated that when cadaver data published by NHTSA were studied using discriminant analysis techniques, the TTI erroneously predicted injury risk for 20 (43 percent) of 47 possible cases. That company also expressed concern that TTI(d) omits age and weight factors. GM stated that cadaver data published by NHTSA indicate that age accounted for about 40 percent of the magnitude of TTI in the cadaver tests. According to GM, TTI(d) cannot be relied upon to predict injury risk since it ignores a major percentage of the correlation function (TTI) which itself did not correlate for 43 percent of the cases upon which it was based.

Ford argued that although the curves of probability of injury versus TTI presented in NHTSA's PRIA indicate a continuous, sharp decrease in injury for decreasing values of TTI, the actual test data show considerable overlap in regions where the corresponding injuries are of markedly different severity. That company stated that TTI provides virtually no differentiation between AIS 0 and 1, between AIS 2 and 3, and between AIS 4 and 5. Ford also asserted that NHTSA had found it necessary to "arbitrarily" adjust the probability of injury versus TTI curves on the basis of slight logical inconsistencies. According to Ford, before adjustment, the curves indicate that for all TTI greater than 151, the probability of AIS greater than or equal to 4 exceeds the probability of greater than or equal to 3, a logical absurdity. Ford asserted that these curves demonstrate that the TTI is fundamentally deficient in predicting injury severity.

NHTSA believes that the TTI is a good predictor of risk of thoracic injury. The development and efficacy of TTI as an injury index is documented in detail at pp. IIIB–16 to IIIB–28 of the PRIA. The TTI relates the probability of an individual receiving a thoracic/abdominal injury of severity greater than AIS 3, 4, or 5, depending on the individual's weight and age, as well as the peak rib and spine acceleration responses recorded during the impact event. There is a monotonically increasing relationship between the TTI and the severity of the maximum thoracic/abdominal injury. (Monotonicity refers to a mathematical relationship in which the dependent variable (Y) increases as the independent variable (X) increases, regardless of linearity or non-linearity.)

It should be noted that each TTI level relates to an injury probability distribution. For example, at TTI=150 g, there is a 75 percent chance of an AIS–3 or greater injury, a 20 percent chance of an AIS–4 or greater injury, and a 0 percent chance of an AIS–5 or greater injury. This is consistent with the variability found in cadaver testing and reflects the range of human injury tolerance in impacts. Thus, NHTSA does not share commenters' concern that a single TTI level can represent several different AIS levels of injury, as that simply reflects the real-world validity of TTI.

GM did not provide sufficient details of its analysis for NHTSA to fully evaluate that company's argument that TTI erroneously predicted injury risk for 20 of 47 possible cases. However, GM's assertion suggests a misunderstanding of what is predicted by TTI. As indicated above, each TTI level predicts an injury probability distribution. It is incorrect to argue that a particular TTI level predicts a particular AIS level injury. This can be illustrated by considering the probability distribution cited above for TTI=150 g. At that TTI level, there is a 75 percent chance of an AIS–3 or greater injury and a 20 percent chance of an AIS–4 or greater injury. While the probability of an AIS–3 or greater injury is considerably higher than the probability of an AIS–4 or greater injury, it would be incorrect to state that TTI=150 g predicts an AIS–3 injury. Since GM's analysis appears to incorrectly assume that TTI predicts a single AIS level injury in each case, the agency does not agree with the analysis.

NHTSA also does not agree with GM's argument that the omission of age and weight from the TTI(d) means that it cannot be relied upon to predict injury risk. The likelihood of injury in a crash differs depending upon a person's age and weight, but for any particular age and weight, TTI(d) correlates with actual injury, i.e., risk of injury increases as TTI(d) increases.

The agency disagrees with Peugeot's contention that poor correlation of the TTI with either abdominal injuries or rib cage injuries indicates that there is a problem with the TTI. The TTI was developed to predict injuries to the hard thorax. Efforts to find relationships with individual portions of this body region may well fail because the TTI accounts for the threat to another part of the hard thorax that has been excluded from such an analysis.

NHTSA disagrees with Ford's suggestion that it "arbitrarily" adjusted the probability of injury versus TTI curves based on slight logical inconsistencies. The implication of Ford's comment is that the agency modified the data to prevent the curves from indicating that the probability of AIS greater than or equal to 4 exceeds than the probability of AIS greater than or equal to 3. Ford's statements are incorrect for several reasons. The data were not modified; rather the procedure for calculating the injury probability curve was constrained to avoid this impossible situation. Further, that company's comments were based on the curves generated in a 1984 NHTSA paper which used Probit analysis. TTI as proposed in the NPRM was derived in 1986 and is based on a Weibull analysis. (The terms Probit and Weibull refer to statistical techniques.) As discussed in section IIIB of the FRIA, NHTSA believes that the Weibull distribution is the most appropriate function for describing injury probability from the type of data in question. When Weibull analysis was used in the 1986 analysis (which included many tests of Opel vehicles), none of the inappropriate relationships (injury probability of AIS greater than or equal to 4 exceeding the probability of greater than or equal to 3) were found.

Some commenters argued that the TTI lacks a biomechanical basis and is test-condition-dependent. GM argued that the TTI cannot be relied upon to reliably predict human thoracic injury risk in side impacts because it lacks a biomechanical basis. That company stated that the agency's assertion that

the TTI correlates to injury is at best correct only for the narrow conditions under which tests were conducted, since statistical correlations cannot be relied upon when conditions vary from those upon which the correlation is based. According to GM, because many factors influence injury risk in a side impact (e.g., door stiffness, contour of door interior, vehicle size, velocity, and others), it is vital that the injury risk function be viable for the entire range of vehicles and impacts for which countermeasures are sought.

BMW stated that it is very difficult to find a physical relationship of the TTI with the injury mechanism. That commenter stated that momentary high accelerations of the ribs can lead to fractures, yet transfer little energy to the thoracic vertebrae. According to BMW, since the TTI is the average of the maximums of rib and spine accelerations at different moments in time, the ribs can be broken, while the TTI still remains within the limit specified in the rule because the value for spine acceleration is low.

Mercedes-Benz stated that the theory of the TTI is based on the assumption that the injury mechanism of the thorax and lower ribcage protected abdominal organs (liver, spleen, kidney) is equally determined by the behavior of the thoracic skeleton. That commenter stated that this theory is not confirmed by injuries from side-impact collisions or by the results of FAT tests. Mercedes stated that anatomically logical separation of thorax and abdomen is valid for injury protection and must be reached through appropriate separate protection criteria.

Peugeot commented that it is difficult to conceive how adding the peak rib acceleration as measured very early in the impact phase to the peak acceleration of the spine as measured in the late stages of the impact can be related to the mechanism of rib and organ injury. Peugeot also argued that although advocates of TTI may consider it to be a good predictor of thoracic injury because a quasi-statistical correlation was found between the TTI values calculated from cadaver tests and the resulting thoracic injury levels, regression analysis produces substantially different relationships for each test condition, suggesting that the TTI is test-condition-dependent. That commenter also argued that accident analysis does not support the TTI. According to Peugeot, the TTI mistakenly presupposes a strong relationship between abdominal and thoracic injuries. Peugeot stated that such a link exists, but only for 17 percent of cases.

NHTSA acknowledges that the TTI represents an empirical formulation as opposed to an injury criterion primarily derived from biomechanical theory. The agency believes that use of an empirical formulation in this instance is acceptable and appropriate for a number of reasons.

The TTI formula was derived from a data base of 84 tests performed on human cadavers in over 20 different test conditions (including speed conditions and impact environments). These tests included pendulum tests, rigid and padded wall sled tests, and full scale vehicle tests ranging in speed from 10 to 40 mph. Padded wall conditions included a variety of materials of various thicknesses. The cadavers ranged in age from 17 years old to 84 years old. NHTSA believes that the test conditions underlying the TTI span and encompass the spectrum of anticipated impact conditions in the full-scale side impact crash test procedure proposed by NHTSA, which itself is representative of real world crashes.

The agency notes that, while the general relationship between TTI and the probability of different AIS level injuries can be seen when all of the cadaver tests are used, the final TTI formulation was derived using the 36 tests in which the cadaver was struck on the left and where both rib accelerations were available. For a more complete discussion of the data underlying TTI, see the Society of Automotive Engineers paper cited above, "Side Impact—The Biofidelity of NHTSA's Proposed ATD and Efficacy of TTI." (SAE Paper No. 861877, Oct., 1986).

Given the data base underlying TTI, the agency is confident that the relationship between TTI(d) and injury risk is valid for the entire range of vehicles and impacts for which countermeasures must be designed in order to meet the dynamic side impact test requirements. This makes TTI(d) appropriate as an injury criterion in a side impact crash test, even though it is based on statistical correlation.

NHTSA notes that the TTI(d) is only valid for lateral impact conditions, the condition specified in the side impact test procedure. NHTSA does not intend that the TTI(d) be used in any test condition other than lateral impacts.

NHTSA also notes that, in addition to being predictive of actual injury, the TTI is consistent with observations pertaining to impacted bodies. For example, TTI is consistent with the fact that the elderly and larger/heavier persons are more prone to injury for a given level of rib and spine acceleration, and with the fact that persons are more prone to injury when exposed to higher accelerations.

Since the TTI is an empirical formulation, the agency does not agree with the assertion of Mercedes-Benz that the theory of the TTI is based on the assumption that the injury mechanism of the thorax and lower ribcage-protected abdominal organs is equally determined by the behavior of the thoracic skeleton. With respect to that commenter's argument that separate protection criteria are needed for the thorax and the abdomen, NHTSA notes that the proposed requirements were not intended to address all abdominal injuries. As discussed below, the agency believes that lateral abdominal compression measurement has not yet been perfected as an injury criterion. However, many abdominal injuries are addressed by protection of the hard thorax, and are predicted by TTI(d).

NHTSA disagrees with Peugeot's claim that regression analysis suggests that TTI is test-condition-dependent. According to Peugeot, such analysis shows different relationships for each test condition. That company's analysis consisted of producing subsets of the NHTSA side impact data based on test conditions (e.g., one subset for padded sled tests, another for vehicle tests, yet another for pendulum tests, etc.) and then looking for the relationship between the reported injury level and the reported TTI value. NHTSA analyzed the cadaver test data, which it broke into sub-sets. NHTSA believes that it used the same data as Peugeot, although Peugeot did not submit their analysis with their comments. NHTSA performed regression analysis of the data for different test conditions. The regression analysis shows similar trends in the overall correlation of TTI and injuries for each test condition. The agency, therefore, does not accept Peugeot's conclusions.

NHTSA also disagrees with Peugeot's arguments that a standard based on TTI(d) cannot offer abdominal protection. NHTSA notes that the lower rib accelerometer and the lower spine accelerometer (used on the dummy to measure TTI(d)) are located close to where abdominal organs such as the liver, spleen, and kidneys are found on a human. In addition, NHTSA has found a relationship between the probability of AIS injuries and TTI. This is significant because AIS injuries 4+ and 5+ include injuries to three abdominal organs (i.e., the liver, spleen, and kidneys). Further, the agency believes that company's own

data contradict its claims. Assuming that pelvis protection is offered as well as thoracic protection, Peugeot's data show that 78 percent of the abdominal injuries were accompanied by rib fractures (that company did not analyze other thoracic injuries), pelvis fractures, or fractures to both pelvis and ribs.

While rib deflection is not directly reflected in the TTI, the agency notes that the TTI correlates with the number of rib fractures. As discussed in the FRIA, NHTSA examined this relationship, using rigid and padded wall cadaver data, and found a strong correlation. The agency therefore concludes that the use of TTI(d) as a performance criterion can significantly limit and control the number of fractured ribs caused by lateral impacts in vehicle collisions. NHTSA therefore does not share BMW's concern that ribs can be broken while TTI remains under the required limit because the value for spine acceleration is low.

A number of commenters argued that the TTI is fundamentally flawed because it is acceleration-based. According to GM, the TTI relates poorly to injury risk because peak accelerations do not relate well to important mechanisms of human chest and abdominal injury. That company acknowledged that acceleration does have some relationship to the overall severity of a crash, but argued that simply combining peak accelerations at two skeletal points, at two instants of time, is insufficient to discriminate between thoracic injuries for a variety of exposures.

Ford asserted that there is "worldwide biomechanical disagreement" with NHTSA concerning TTI, based on the inability of TTI(d) or any other acceleration-based injury criterion to represent quantitatively the likelihood of injury to organs in the human chest.

MVMA noted that accelerations used to calculate TTI are measured by accelerometers attached to the ribs and spine. That commenter stated that since the human chest is not totally rigid but instead consists of various flexible components, measuring acceleration of the rigid dummy spine or ribs will not reliably predict injury to the viscous organs within the chest. MVMA also stated that if "whole body loading" does not occur (i.e., if a concentrated load is applied), acceleration of the spine or ribs may be small and thus fail to predict injuries which occur due to chest compression.

Peugeot commented that transversal acceleration measured at the rib is at best only an indication of violence but in no case an acceptable indicator of thoracic lesion. That commenter also stated that thoracic acceleration alone does not enable one to account for both deformation of the car side-wall and deformation of the thorax. Peugeot commented that the same thoracic acceleration value can be obtained with a not-very-rigid side-wall and a too-rigid dummy thorax, or with a too-rigid side wall and a very deformed dummy thorax, and therefore predict the same level of thoracic injury.

The requirements proposed by NHTSA were designed to reduce hard thorax (includes skeleton as well as organs like the liver, kidney, heart and spleen) and pelvic injuries associated with accelerations. Acceleration is one of a number of possible measures of the severity of the injury that occurs to a person in a crash. NHTSA believes that the critical question is whether the TTI(d) injury criterion, consisting of acceleration measurements, can discriminate the risk of hard thorax injury in simulations of real-world side impact crashes. The agency believes that available evidence indicates that TTI(d) can do so. In other words, as TTI(d) is reduced, the risk of injury is also reduced. A reduction in TTI(d) signifies that the severity of injury to a person in a crash, as measured by acceleration, is reduced. Severity of injury as measured by other means, such as compression, may also be reduced, although it is not measured as part of TTI(d). As long as the TTI(d) injury criterion can discriminate risk of thoracic injury, the agency believes that the precise injury mechanism (acceleration, compression, some combination of forces, etc.) is not critical.

NHTSA disagrees with MVMA's contention that accelerometers attached to the ribs and spine cannot reliably be related to injury to the viscous organs within the chest. Since accelerometers on the ribs and spine are located close to the viscous organs within the chest, they measure parameters that may cause viscous organ injuries. Countermeasures that result in reduced accelerations on the ribs and spine will also generally result in reduced severity of injury to the nearby viscous organs, reducing the risk of injury.

With respect to MVMA's argument that TTI(d) might not discriminate a concentrated load, NHTSA notes that full body loading is typical of side impact crashes. Acceleration measurements taken from the rib and spine indicate the severity of injury involved in impacts such as those caused by armrests.

NHTSA does not agree with Peugeot's concern that the same thoracic acceleration value can be obtained with a not-very-rigid side-wall and a too-rigid dummy thorax, or with a too-rigid side wall and a very deformed thorax. By specifying an appropriate test dummy (an issue which is addressed in the separate notice on SID), and hence establishing the stiffness of the dummy, the agency can ensure that the TTI(d) measured in a crash test is comparable to what would be experienced by persons in real world crashes. NHTSA notes that Peugeot's comment is related to the argument raised by a number of commenters that the SID chest is overly stiff. A full discussion of that issue is presented in the separate notice on SID.

Several commenters argued that the TTI may not suggest appropriate countermeasures since it does not describe the time when injury to the thorax occurs. MVMA noted that the peak spine and peak rib accelerations do not necessarily occur at the same time. Consequently, according to that commenter, TTI(d) does not necessarily represent the actual risk of injury.

NHTSA notes that, while TTI correlates well with the occurrence and severity of injuries, this does not mean that the occurrence of either peak acceleration response corresponds exactly in time to the occurrence of body injury. Parameters measured on the skeleton, such as acceleration, do not necessarily give the precise time of peak local stress or strain to the hard thorax or whatever mechanism causes a local injury. While the exact time of injury occurrence may be desirable from a researcher's perspective, it is unnecessary for purposes of regulation. In establishing a performance requirement that meets the need for safety, NHTSA is concerned whether an injury criterion predicts the probability of differing levels of overall thoracic injury that a person would experience in a real-world crash, and not whether it can be used to determine the mechanism or exact timing of such injury.

Several commenters argued that the use of the TTI could lead to designs which provide little or no safety benefits. GM cited the results of armrest tests in support of this argument. SID dummies and anesthetized swine were impacted using a six-inch-diameter pendulum fitted with simulated armrests of different stiffnesses. According to GM, the SID/TTI results indicated that the stiffest armrest posed the least risk, while the swine/TTI results indicated that the softest armrest was preferable. That company stated that autopsies of the swine showed similar soft tissue liver lacerative injuries for each case,

indicating that all of the armrests posed similar risks.

NHTSA notes that GM's armrest tests involved applying a concentrated load to the SID dummies and swine. However, as indicated above, side impact crashes typically involve full body loading, and TTI(d) predicts thoracic injury risk in such impacts.

The agency does not wish to imply that armrest design is unimportant for side impacts. Accident data indicate that armrests cause injury to both the pelvis and the abdomen. While the EuroSID and BioSID (other side impact dummies being developed by the European Economic Community and the Society of Automotive Engineers, respectively) were designed with abdominal load sensors, the SID dummy was not. The EuroSID and BioSID dummies are discussed further in the separate notice covering SID. NHTSA has conducted experiments with frontal abdominal injury sensors and developed injury criteria for the Hybrid III dummy and believes that direct lateral abdominal measurement has not yet been perfected as a compliance tool. Some armrest injuries are addressed through the measurements of TTI(d) with the SID. The TTI(d) criterion is based on injuries to the hard thorax, which includes some but not all abdominal organ injuries. Also, the limit on pelvic acceleration addresses armrest injuries to the pelvis. Moreover, even though some armrest injuries are not addressed, armrests are not likely to become more aggressive as a result of the TTI(d) or pelvic g requirements. The agency also notes that, as discussed further below, the fact that the proposed test procedure does not completely address armrest injuries is a reason to retain the existing armrest requirements of Standard No. 201, *Occupant Protection in Interior Impact.*

BMW stated that since the TTI is comprised of maximum acceleration values only, it necessarily reacts very sensitively to damping. That commenter stated that it is possible that, in some cases, through the use of padding, the TTI value will be reduced without a corresponding increase in real-world safety. BMW cited a study showing that with a damping material which reduced the energy input by less than nine percent, the injury risk as measured by TTI was reduced from 83 percent to 20 percent. That commenter expressed doubt that the actual injury risk for human occupants is reduced to this extent. Chrysler raised similar concerns.

As indicated above, TTI correlates well with the occurrence and severity of injuries. NHTSA believes that the addition of interior padding can often result in a significant reduction of injury risk. Depending on TTI(d) level and AIS level of injury, the agency considers it likely that a small reduction in energy input may make the difference in whether a person receives a serious injury or not.

GM and Ford each argued that the use of TTI(d), coupled with what they consider to be the excessive stiffness and excessive mass of the SID chest, could lead to the use of interior padding that is overly stiff and could actually degrade occupant safety, particularly that of the elderly. Honda stated that since the bone condition factor (bone flexibility) is not taken into consideration for TTI, the severity of injury in the real world may possibly be increased by countermeasures aimed at decreasing TTI.

NHTSA disagrees that the use of TTI(d) and the SID would lead to the use of interior padding that is so stiff that it would increase injuries to the elderly or any other group of persons. Any padding that is added to a car to reduce TTI(d) would be less stiff than the interior car door and make a contribution to improving occupant safety for persons of all ages. As indicated above, for persons of any particular age, TTI(d) correlates well with the occurrence and severity of injuries. Ford appears to be concerned that very stiff padding might be necessary to meet the proposed requirements, whereas softer padding might provide even greater benefits to the elderly. NHTSA notes that one potential answer for this concern is for the manufacturers to utilize a combination of structure and padding to meet the test requirements.

NHTSA notes that, as part of research comparing SID with two side impact dummies still in the research stage, EuroSID and BioSID, the agency recently conducted a series of tests to examine the effect of padding stiffness upon the injury hazard measurements of these dummies when subjected to a given test condition. Each of these dummies was exposed to a series of 20 mph lateral impacts into a rigid wall which was padded with three inch thick foam padding of varying stiffnesses. The padding stiffness varied from very soft to nearly as stiff as the rigid wall. Using TTI(d), all three dummies indicated that the very soft and very stiff padding are the most hazardous in impact situations. There was very little difference between the three dummies in the choice of an optimal padding. The optimal padding stiffness determined by the three dummies ranged approximately from 15 to 25 pounds per square inch, measured at 35 percent compression. For BioSID, a slightly stiffer padding was selected for V*C than for TTI(d). (V*C is a compression-based injury criterion advocated by GM and other commenters as an alternative to TTI(d) where V is velocity of chest compression and C is lateral chest displacement.) While, as discussed below, the data supporting V*C are limited, NHTSA observes that to the extent that it is a valid injury criterion, these BioSID results contradict the argument that use of TTI(d) would cause manufacturers to select overly stiff padding. A further response to this issue, particularly with respect to concerns about effects relating to the stiffness and mass of the SID chest, is provided in the separate notice on SID.

Nissan expressed concern that, in tests it conducted using SID dummies, the correlation trend for door padding material hardness and TTI(d) was different from the correlation trend for V*C and chest compression. That company stated that the padding hardness required to minimize TTI(d) values on the one hand, and to minimize V*C and rib deflection values on the other, did not match. Nissan stated that it thinks padding is effective for minimizing dummy readings in side impacts, but that the appropriate padding hardness has not yet been identified.

NHTSA notes that SID was not designed to measure V*C or rib deflection. In order for a test dummy to produce human-like readings of V*C or rib deflection, the dummy must have biofidelity for chest compression. However, SID was not designed to have biofidelity for chest compression. It was designed for biofidelity in measuring TTI(d), which the agency found to be a measure strongly related to thoracic injury. Therefore, the agency believes that SID cannot be validly used to develop a correlation trend for V*C or rib deflection.

Nissan also stated that it had compared the TTI to driver fatality rates in side impacts using 1986 FARS data and did not find a close correlation. Ford commented that while NHTSA had tested production cars with its proposed test procedure, it had not shown that the test results are correlated with human injuries in traffic accidents in those same cars.

NHTSA notes that it tried to correlate the TTI(d) from 12 models it tested with fatality and injury rates in side impacts, and found a poor correlation. However, NHTSA does not believe that this calls into question the reliability of TTI(d). Staged testing often does not correlate well with real world crashes. With a limited number of models to compare,

the number of cases found are small and of differing speeds and circumstances. The chances of finding a reliable correlation are thus very small.

The agency has, however, compared accident data for 2-door and 4-door cars, which have different average TTI(d) levels, to determine whether the differences are reflected in the accident data. As discussed in section IIIC of the FRIA, the average driver TTI(d) measurements in a 2-door car are about 14 percent higher than in a 4-door car, while the rear passenger readings are about 14 percent lower. The results of the 2-door/4-door accident data comparisons are directionally consistent with what would be expected from 2-door/4-door TTI(d) comparisons, and relatively close to TTI(d) differences found in matched pair 2-door/4-door side impact testing. After adjusting for age, 2-door cars have higher injury rates in the front seat and lower injury rates in the rear seat than 4-door cars. In this respect, test results are representative of real world accident data.

Ford stated that it urged in 1980 (in a comment on a side impact ANPRM) that NHTSA conduct accident reconstruction-restaging studies to relate field injuries to dummy responses in simulated accidents. That company recommended at the same time that NHTSA should conduct full vehicle dynamic side impact tests with cadavers on board the target vehicle instead of dummies. Ford noted that the cadaver results could then be compared to accelerations previously measured on the SID to confirm dummy-cadaver injury relationships under actual compliance conditions. Ford stated that it still believes NHTSA should perform such studies and tests before issuing a final side impact rule.

While NHTSA does not disagree that the testing suggested by Ford would be relevant, there are limits to how much testing can be conducted to support a particular rulemaking. It would be difficult and expensive to conduct additional full scale vehicle tests with cadavers on board. NHTSA notes that the FAT tests, discussed above, did involve testing actual car bodies with cadavers. NHTSA believes that the results of those tests, along with other tests, make additional cadaver testing unnecessary. The agency notes that regardless of how many tests and studies it conducts, it would always be possible to do more. NHTSA believes that the tests and studies it has conducted in support of this rulemaking are fully adequate.

2. Estimated Benefits of the TTI(d) Performance Criterion

NHTSA explained in the NPRM that, as part of its side impact protection research program, it had conducted 20 crash tests of 12 production passenger cars using the proposed test conditions and SID. To evaluate the effects of meeting a specified thorax performance criterion, the agency analyzed the probability of thoracic injury for each of the cars in the 20 tests, using the TTI and other factors, and compared this to the level of injury that would occur for each of the alternative values of the proposed TTI(d) thorax criterion. The estimated benefits for the different levels of the proposed TTI(d) thoracic injury criterion were calculated, based on the assumption that the production vehicles tested by NHTSA were representative of the total fleet of new cars. That is, all cases exceeding a particular chosen maximum TTI(d) were reduced to the specified level, while all vehicles having lower values retained their original values. Injury distributions were then recalculated using the altered TTI(d) values.

Subsequent to issuance of the NPRM, the agency conducted eight additional production vehicle tests, using eight different models. One model was also tested by Transport Canada. In addition, the agency received, as part of comments, test data on 25 additional models from four different motor vehicle manufacturers. NHTSA notes that the data from the manufacturers were submitted under claims of confidentiality.

In estimating benefits, NHTSA's FRIA uses only data from those more recently designed models (model year 1984 and later). These data include 23 models, 10 2-door models and 13 4-door models. The FRIA assumes, among other things, that the 23 models are representative of the current fleet of vehicles on the road and of the fleet of vehicles that will be produced in the near future. Results, which take into account the increased safety belt usage seen in recent years and expected for the future, are shown in Table 1. As with any requirements for new vehicles, the benefits accrue over the 10–15 year life of the model year fleets affected. For additional explanation of the data underlying Table 1, see chapter IV of the FRIA.

TABLE 1.—THORAX BENEFITS FOR DIFFERENT MAXIMUM LEVELS OF TTI(D) PERFORMANCE IN THE BASELINE FLEET

TTI(d)	Two-Doors		Four-Doors		Total Fleet	
	AIS 3–5	Fatals	AIS 3–5	Fatals	AIS 3–5	Fatals
80	1,922	504	681	218	2,603	722
85	1,714	450	399	117	2,113	567
90	1,450	381	178	49	1,628	430
95	1,130	290	63	22	1,193	312
100	765	203	0	0	765	203
105	422	123	0	0	422	123
110	100	37	0	0	100	37
115	43	20	0	0	43	20

The methodology used in the FRIA for estimating benefits is essentially the same as that utilized in the PRIA, with some minor adjustments. The estimated benefits are somewhat lower because they rely on new data from more recently designed models. These data indicate that the average TTI(d) of vehicles in the new car fleet is lower than previous data supporting the calculations in the PRIA suggested. NHTSA believes that the new data reflect the improvements by a number of manufacturers to the side impact protection of their vehicles over the past several years, while this rulemaking has been progressing.

3. Alternative Thoracic Injury Criteria

General Motors has developed what is known as the viscous injury criterion (V*C) for use in analyzing soft tissue injuries in frontal impacts. This injury criterion is based on the product of the instantaneous thorax compression (C) and the rate of thorax compression (V) that occurs during the impact.

In the NPRM, the agency stated that while it believed that the work GM has done with the V*C shows that such an approach may be promising, there were insufficient data to support adopting V*C as a criterion for assessing vehicle safety in side impacts. The agency also stated that there were no dummies designed with biofidelity for measurement of lateral V*C. NHTSA noted that, in contrast to the V*C criterion, the agency has a substantial amount of cadaver impact tests that indicate that TTI(d) is a reliable predictor for thoracic injuries, as well as a fully developed and validated test dummy.

Many commenters argued that a compression-based injury criterion, such as V*C or rib deflection, would be superior to TTI(d) or other acceleration-based injury criteria. GM noted that acceleration has long been used as a criterion of some merit because it provides some indication of the forces which are imposed on the body. According to that company, however, more recent studies have shown that thoracic compression is an essential discriminator of injury potential, particularly as regards the soft organs of the chest. GM stated that, in general, the more the chest is compressed, the greater the potential for injury, particularly at low rates of compression.

Since the NPRM was published, GM has continued its work with respect to V*C, including the development of a new dummy, called BioSID, designed to measure chest compression and to derive V*C. Also, GM conducted a series of 14 cadaver tests, the results of which, according to that company, indicate that V*C relates closely to the injury patterns observed with the cadavers.

Ford commented that it and others believe that injury criteria based on the compression of the chest during a crash impact have a greater potential to predict the likelihood of chest injury in a side impact crash than does TTI(d). According to that commenter, the ability of compression-based injury criteria to predict injury has been well substantiated by experiments with human cadavers and live animals, and is supported by biomechanical theory. Ford stated that it believes that some combination of chest compression and velocity of chest compression will likely emerge as the most suitable criterion. That company argued that NHTSA should not promulgate a final rule until an injury criterion and test device based on chest compression is developed and evaluated.

After considering the comments, NHTSA is not persuaded that V*C or a similar approach should be used in this rulemaking. As discussed above, the agency believes that TTI(d) is a reliable predictor for thoracic injury and the agency has a fully developed and validated dummy for measuring the TTI(d). The data supporting V*C are much more limited than those supporting TTI(d). Also, while GM has made considerable progress with BioSID, SID has been the subject of an NPRM and seen much wider use. NHTSA does not believe that V*C is necessarily any better an injury predictor than TTI(d) and notes that further work in validating V*C would significantly delay the rulemaking. Since TTI(d) and SID are ready now, and a final rule specifying TTI(d) can result in significant safety benefits, the agency believes it is appropriate now to go to a final rule using TTI(d). If V*C or another injury criterion should later be shown to offer additional benefits, and to be measurable by appropriate test dummies, the agency can then consider specifying such a criterion in addition to, or in place of, TTI(d) at that time.

B. Pelvis

As discussed in the NPRM, NHTSA has done research to develop criteria to limit pelvic injury in side impacts. The research, which has been published in a paper, "Synthesis of Pelvic Fracture Criteria for Lateral Impact Loading," presented at the Tenth International Technical Conference on Experimental Safety Vehicles, reviewed data from the above-mentioned 84 cadaver impact tests which measured the acceleration of the pelvis. As a result of that review, the agency developed estimates of the probability of pelvic fracture for different acceleration levels measured in the pelvis of the cadavers.

NHTSA is concerned that certain vehicle design modifications could reduce thoracic response in side impact crashes by shifting the load path into the pelvis. A pelvic injury criterion was proposed to prevent the concomitant worsening of pelvic protection.

The NPRM explained that, in order to evaluate the effects of requiring cars to meet various maximum pelvis acceleration levels, the agency estimated the probability of pelvic injury for each of the 12 production passenger cars that were crash tested in the agency's research programs. The agency then calculated the expected benefits derived from having vehicles comply with various limits on pelvic acceleration levels.

NHTSA's FRIA uses the same approach for calculating benefits for the pelvis. However, the FRIA uses the above-referenced data from the 23 more recently designed vehicle models. Results, which take into account the increased safety belt usage seen in recent years and expected for the future, are shown in Table 2.

TABLE 2.—ESTIMATED PELVIC FRACTURE INJURY REDUCTION

Alternative levels of peak pelvic G's	Nonfatal fractures
130	774
150	316
170	40
190	0

C. Prohibiting Door Openings

The potential benefits of requiring the doors to remain closed during a side impact consist of reducing the number of persons who are ejected from a car through a door and strike an object outside the car. NHTSA stated in the NPRM that its review of the results of the 12 vehicle crash tests showed that a door on four of the vehicles opened during the crash. The agency then estimated the number of ejections that occur in side impacts and evaluated the potential effectiveness of keeping the door closed in reducing occupant deaths and injuries. NHTSA tested eight additional models after issuing the NPRM. None of the additional vehicles had a door open during the crash test.

The FRIA estimates that the requirement prohibiting door openings will eliminate 14 fatalities and 13 serious-to-critical injuries each year. These estimates take into account the increased safety belt usage seen in recent years and expected for the future. The estimated benefits are lower than estimated in the PRIA, based upon the use of data from additional crash tests. In addition, as discussed below, the agency decided not to include near-side ejections in its benefits analysis.

NHTSA anticipates that the improvements that might be made to keep doors from opening during the side impact test would also be of benefit in frontal, rear, or rollover crashes, but these potential benefits are not included in the FRIA's estimates.

Ford requested clarification of some of the proposed requirements prohibiting door opening. The proposed language for section S5.3.2.2 (S4.3.2.2 in the NPRM) stated that neither the latch nor the hinge systems of the door shall separate. Ford stated that the meaning of the word "separate" is unclear. That commenter asked what parts are not to separate from one another. NHTSA notes that the meaning of the word

"separate" is disengagement or release from attachment and/or connection. This provision requires that the latch must not separate from the striker, and the hinge components must not separate from each other or from their attachment to the vehicle. NHTSA has modified the wording of this provision to make this clear.

The proposed language for section S5.3.2.3 (S4.3.2 3 in the NPRM) stated that neither the latch nor the hinge systems of the door shall pull out of the anchorage. Ford stated that the meaning of "the anchorage" is unclear. That company stated that inasmuch as at least two components are mentioned, i.e., the latch and the hinge systems, it is not clear to which component "the anchorage" pertains. NHTSA has modified the wording of this provision to state that neither the latch nor the hinge systems of the door shall pull out of their anchorages. The agency notes that the word "anchorage" refers to the provision for transferring latch and/or hinge loads to the vehicle structure. The term "anchorage" includes, but is not necessarily limited to, the attachment hardware used to attach these components to the vehicle structure.

D. Comments on Benefits Analysis

NHTSA received numerous comments arguing that the benefits estimated by the agency were overstated. The more significant comments are discussed below, with the exception of concerns about the SID, the TTI versus risk of injury curve, and the MDB. While those concerns are relevant to benefits, they are addressed elsewhere in this preamble or in the separate notices addressing the SID and the MDB. A more complete discussion of comments concerning benefits is provided in appendix IV–A of the FRIA.

Many commenters argued that the agency included inappropriate crashes or injuries in its benefits analysis. CCMC argued that although the NPRM was supposed to address car-to-car impacts, the injury data base used by the agency included all types of obstacles with which a car would collide. That commenter stated that the analysis should have excluded truck-to-car, or car-to-pole/tree accidents which generally produce severe-to-fatal head injuries. GM also argued that the agency should not include benefits for single vehicle impacts, since this is not the focus of the rulemaking.

NHTSA included in its benefits analysis only those cases in which the most serious injury occurred in the chest, abdomen, or pelvis. Head injuries were not included. The agency does not believe that there is any reason to limit the benefits to car-to-car impacts. The addition of padding or structure should be of benefit to occupants no matter what type of vehicle or fixed object is impacted. NHTSA notes that it has conducted one set of pole tests that indicated similar benefits from countermeasures as in the barrier tests.

CCMC expressed concern, with respect to direct impact to the pelvis, that all near-side occupants are considered without taking into account the pattern and risk of injury or whether the occupant is directly hit or not by the striking car. NHTSA does not believe there is any need to limit the benefits to those cases where the occupant compartment is struck or to exclude those cases where intrusion injured the occupant. The agency believes that the countermeasures, especially padding, will be just as effective even if the rear side of the car is struck, although these impacts rarely involve the more serious injuries. In terms of intrusion, no benefits are assumed above 35 mph delta V, which eliminates some of the more serious intrusion cases. (The term delta V refers to the change in velocity experienced during an impact. The delta V experienced by the target car during the proposed full scale dynamic side impact crash test ranges from about 12.5 mph for a large car to 17 mph for a small car.) The new requirements will limit injury, but not necessarily intrusion, in a fairly severe impact. CCMC suggested a cutoff at a closing speed of 18 mph. The agency believes that 18 mph is too low of a cutoff. NHTSA has performed tests demonstrating the effectiveness of structure and padding countermeasures as high as 21.2 mph delta V.

Ford stated that the agency should not have included rollover and ejection crashes in the analysis of thorax/pelvic injury benefits. That commenter stated that NASS data indicate that 20 percent of car occupants with moderate or worse injury in side impacts were ejected from the car, and that an additional seven percent of these occupants were involved in a rollover but not ejected. Ford argued that these 27 percent should not have been included in the agency's benefits analysis.

NHTSA's benefits analysis examines the most severe injury to the occupant by injury source and includes only those chest, abdominal, upper arm and shoulder injuries that resulted from contact with the interior door or door hardware/armrest. All occupants that suffered their most severe injury outside of the car are excluded from the benefits analysis because the countermeasures that will be implemented in response to this rule will only benefit occupants who remain in the struck car. Occupants who were involved in a rollover but not ejected are included if they had injuries to the chest, abdomen, upper arm or shoulder that resulted from contact with the interior door or door hardware/armrest. To the extent that padding is the countermeasure utilized. NHTSA believes that these occupants would benefit from the padding. While it is not as clear whether such occupants would get the same level of benefits from structural changes, this group of occupants is a very small part of the target population.

Ford also argued that near-side ejections should not be included in the analysis of door retention benefits. That company stated that the proposed dynamic side impact test confirms door retention on the far side only, since the near side door is pinned in by the barrier and cannot open. The agency's original analysis, however, considered benefits for all door ejections. After considering Ford's comment, NHTSA decided to take a conservative position on this issue and exclude the near side ejections from its benefits calculations for reducing side door openings. Since the side impact test procedure does not represent an oblique collision, where the corner of a striking vehicle could impact one edge of the door, causing the other end to open, manufacturers will not be required to design for such a collision. That change is reflected in the FRIA's benefits estimates cited above. However, although the near side door is trapped shut in the test, the agency believes that a small amount of benefits due to reduced ejections are likely to result from the upgrading of hinges and latches, in near side crashes where the occupant's door is not trapped shut.

NHTSA also received a number of comments criticizing its benefits analysis for reasons other than the merits of including particular types of crashes or injuries. GM argued that NHTSA had incorrectly assumed a constant countermeasure effectiveness at all crash severities. That commenter stated that padding does not have the same effectiveness at all speeds. According to GM, padding that is designed for a range of impacts will be less effective at speeds below the range because all of its energy absorption potential will not be used. At higher speeds it will be less effective because the padding can "bottom-out" before the impact is complete. GM also argued that the severity of the proposed crash test is too severe to address the greatest number of injury exposures. According to that company, the proposed crash test discourages countermeasures which

could be more effective at lower impact speeds, where a greater number of injuries occur.

NHTSA notes that, as discussed in the FRIA, available data indicate the same countermeasure effectiveness at delta V's from 13.3 mph to 21.2 mph. Most injuries occur below 21 mph delta V. The agency assumed no effectiveness above 35 mph delta V. While effectiveness may vary somewhat for different speeds, the agency does not have any data to make specific adjustments. Thus, NHTSA implicitly assumes that the differences in effectiveness, some higher and some lower, would balance out over the range of injuries. NHTSA did not select a lower speed because it wants to reduce the incidence of the most severe injuries and fatalities, rather than merely reducing the incidence of minor injuries such as bruised ribs.

GM also argued that because many fatalities involve very high speed impacts and significant deformations of side structures, about 70 percent of the nearside occupant fatalities that result from chest and abdominal injuries are unpreventable by practical design changes. NHTSA believes that this estimate is overly high. In the agency's 1984 analysis of the potential benefits of automatic restraints, about 40 percent of all fatalities were believed to be unsurvivable with any restraint system. These unsurvivable cases had either catastrophic intrusion into the passenger compartment or delta V greater than 45 mph. While the percentage could be higher in side impact crashes, the agency does not believe that it would approach 70 percent. The FRIA, in appendix IV–A, evaluates available NASS data as a test of GM's 70 percent estimate. The agency examined cases cited by GM and other cases with similar delta V's and compartment intrusion. In those cases, NHTSA found that there were more survivors than fatalities. Thus, NHTSA disagrees with GM's assertion that 70 percent of the cases in this category are unsurvivable.

GM also cited a hypothetical benefits comparison in support of its contention that the agency overestimated benefits. That company argued that if side improvements are 20 percent as effective as air bags are in frontal impacts (assumed to be 30 percent effective), then only 96 fatal chest and abdominal injuries in multi-vehicle side impacts could be prevented. NHTSA does not agree with GM's assumption that air bags are only 30 percent effective in frontal impacts. The agency has previously estimated that air bags are 20 to 40 percent effective overall. Since overall air bag effectiveness derives principally from frontal impacts, which represent about 50 percent of fatalities, NHTSA estimates air bag effectiveness to be 40 to 80 percent in frontal impacts. Also, GM did not offer any basis for its assumption that side improvements will be only 20 percent as effective as air bags. Thus, NHTSA does not agree with GM's analysis.

CCMC commented that NHTSA's estimation of benefits does not take into account the age of occupants. However, contrary to that commenter's belief, occupant age is included in the analysis by including the probability of occupant thoracic injury by age and by weighting occupants in side impacts by age.

VI. Test Procedure

A. Speed, Angle and Point of Impact

In developing the NPRM, the agency examined the data in the National Crash Severity Study (NCSS) to establish the appropriate impact velocities and impact point to be used in the Standard No. 214 crash test. By using the NCSS data, NHTSA determined the median speed of side impact accidents (26 mph striking vehicle/13 mph struck vehicle), and the median speed of accidents that caused serious injuries or death (35 mph/17.5 mph). Based on its analysis of accident data and its judgment about the threshold speed of serious injury accidents, NHTSA tentatively decided that the threshold speed of serious injury (30 mph/15 mph) was the most appropriate test speed.

The agency also reviewed the angle of orientation between the longitudinal axis of the striking and struck vehicles and determined that 90 degree impacts were the most frequent. In view of the potential difficulty of conducting tests in which both the target and striking vehicles are moving and in which the first contact must be made at a specified location on the target vehicle. NHTSA devised a test in which only the striking "vehicle" is moving. Using vector analysis, the agency combined the impact speed and impact angle and determined that the dynamics and forces of a crash in which a vehicle traveling at 30 mph perpendicularly striking the side of a vehicle traveling at 15 mph could be represented by a test configuration in which:

- The test vehicle is stationary;
- The longitudinal centerline of the moving deformable barrier (MDB) is perpendicular to the longitudinal centerline of the test vehicle;
- The front and rear wheels of the MDB are "crabbed" at an angle of 27 degrees to the right of its longitudinal centerline in a left side impact and to the left of that centerline in a right side impact; and
- The MDB moves at that angle and at a speed of 33.5 mph into the side of the struck vehicle.

NHTSA examined crashes involving serious to fatal injuries to determine the median value of the impact points. The impact reference point describes the relative positions of the striking vehicle and the struck vehicle at the time of impact. In particular, the agency defined the impact reference point, for the purpose of a left side impact, as the position of the left forward edge (corner) of the striking vehicle when contact is first made with the left side of the struck vehicle. This definition is based on crash data which included documentation of the damage that occurred to the side of the struck vehicle. A value of 37 inches forward of the center line of the wheelbase of the struck vehicle was determined. This means that for a left side impact, the left edge of the striking vehicle would be 37 inches forward of the mid-point of the wheelbase of the struck vehicle at the time of initial contact.

GM argued that the proposed impact speed is too severe. According to that commenter, designing a door for a test at 30 mph may provide only limited improvement at some other speeds, and will provide diminished protection at the lower speeds at which most preventable injuries occur. That company argued that the importance of impact speed is enhanced by its findings that older people are overrepresented in side impact injury statistics. GM noted that impact tolerance for older occupants is lower at all speeds than it is for younger occupants, and stated that it follows that the use of softer energy absorption materials should be considered.

NHTSA disagrees with GM's argument that the proposed test impact speed is too severe. As indicated above, the basis for the proposed test impact speed is NCSS crash data, and the proposed test condition represents one of the most predominant real world crash conditions. The 30/15 mph velocity combination represents a crash severity associated with a 15 percent probability of sustaining a serious-to-fatal thorax injury. Therefore, this test condition is realistic.

Countermeasures designed for the 30 mph/15 mph condition will likely have positive effectiveness over the range of impact speeds. For example, as noted above, available data indicate the same countermeasure effectiveness at delta V's from 13.3 mph to 21.2 mph. The purpose of proposed side impact requirements is to prevent serious

injuries and fatalities, rather than to address minor injuries. If the agency selected too low a test speed, the countermeasures used by manufacturers might not be effective at the higher speeds where more serious injuries are likely. For example, if very soft padding were selected, the padding would likely "bottom out" in a moderate impact and provide little protection.

NHTSA also does not agree that the proposed test speed would lead to countermeasures that are inappropriate for older occupants. As discussed above, any padding that is added to a car to reduce TTI(d) would clearly be less stiff than the interior of the car door and make a contribution to improving occupant safety for persons of all ages.

Numerous commenters objected to the crabbed wheel test condition, arguing that a perpendicular MDB impact would be less complex and introduce less test variability. Commenters also indicated that a perpendicular impact would promote harmonization, since Europe and Japan are investigating that test condition.

GM stated that, based upon MVMA crash tests, the crabbed configuration does not affect dummy responses significantly. That company expressed concern that when the MDB strikes the test vehicle, it slides some distance along its side before appreciable deformation occurs. GM argued that in the interest of eliminating what it considered a needless artifact which compromised objectivity, a perpendicular impact collision simulation should be used.

Ford argued that the dynamic effects influencing the kinematics of the struck car resulting from the crabbed motion of the barrier happen only after the dummy's maximum accelerations have been recorded and have no effect on chest or pelvic acceleration or on chest compression. That commenter stated that uncrabbed perpendicular impact at 30 mph by the barrier would produce essentially the same results without the complication of accurately driving the barrier in crabbed motion. Ford also argued that eliminating the crabbed motion of the barrier would reduce test-to-test variability and promote international harmonization of side impact regulations, as well as simplify mathematical modeling of the crash test during vehicle design and development.

As indicated above, in typical real-world side impacts, both vehicles are moving. In order to make the proposed crash test as representative as possible, the agency wanted to simulate that condition. Recognizing the difficulties associated with having more than one vehicle moving in a crash test, the agency proposed a test that would represent that condition without requiring movement of both vehicles. Given that the test car remains stationary, the crabbed wheel test condition is more representative of real-world side impacts than a perpendicular test. In particular, the crabbed configuration produces longitudinal loading on the struck vehicle, as would happen if both vehicles were moving. Therefore, NHTSA does not believe that this proposed test condition should be changed, absent strong reasons.

An additional reason to maintain the crabbed wheel condition is that it facilitates testing side impact protection for both the front and rear seating positions in a single test. If the MDB were used in a perpendicular mode, a smaller area of the target car would be struck, and separate tests might be needed to assess front and rear performance.

NHTSA is not persuaded from the comments that the crabbed wheel test is difficult to run or introduces significant variability. The procedural steps for running a crabbed wheel test or non-crabbed wheel test are essentially the same, and NHTSA and a number of manufacturers have successfully conducted crabbed wheel tests. Indeed, NHTSA is aware of over 100 side impact tests conducted around the world. The agency has little data to compare the variability of crabbed versus non-crabbed test conditions. However, the agency is satisfied with repeatability of the crabbed test condition. NHTSA notes that in May 1990, Ford provided data from a recently completed side impact crash test program conducted to evaluate variability in test results. The study consisted of crashing six similar Ford Taurus vehicles using the proposed dynamic test procedure, including crabbed wheels. The data show that the crabbed test procedure is very repeatable.

Ford stated that many test facilities, including its own, cannot pull a crabbed cart through its center of gravity during guided travel. That company stated that this creates a greater tendency for a crabbed cart to deviate from its assigned path during the coast phase, increasing impact point variability. However, NHTSA has not experienced this problem at any of its contractor facilities.

Some commenters suggested that NHTSA specify a different impact point, the R-point (projection of the dummy's H-point), which is used in the European test procedure. GM stated that the impact point proposed by NHTSA is one of many which could be selected that are similarly credible, and suggested that specification of the R-point would promote international harmonization. EEVC stated that the R-point was selected for the European test procedure based on an accident survey conducted in France. That commenter believed that the R-point would be the most effective in the United States as well.

NHTSA compared center line of the barrier and the proposed impact point in its procedure to the European R-point. The agency found that the European R-point was generally behind the center line of the barrier and the proposed impact point. Thus, if NHTSA were to specify the R-point as the impact point, with the crabbed procedure, the barrier would not engage the A-pillars of some vehicles and would not cause a full impact loading of the dummy.

The agency believes that its proposed impact point is well-justified. For a further discussion of the basis for the proposed point, see chapter III, section A.8 of the FRIA. NHTSA agrees with GM that the proposed impact point is one of several which could have been selected. The agency does not believe that selecting the R-point would have any impact on international harmonization, given other more significant differences between the new Standard No. 214 test procedure and the European procedure. For example, harmonizing on the precise impact point would not provide any meaningful benefits when very different moving barriers are specified. In addition, different impact points may affect test results. Therefore, one reason not to change the impact point is that such a change could reduce the value of the many side impact tests which have been conducted to date, for compliance and other purposes. Since NHTSA does not see any reason to specify the R-point, it is not making that change.

NHTSA has decided to make one minor change to the proposed impact point. Since the impact point is based on the center line of the wheel base of the struck car. NHTSA is concerned that the impact point for cars with very long wheel bases might be too far toward the rear of the car This could result in the front dummy/door impact occurring after the barrier has slid past the dummy, with the dummy not experiencing the full impact. The largest car NHTSA has tested in its side impact test program had a wheel base of 114 inches. For that vehicle, the impact point was 20 inches behind the front axle. For cars with wheelbases greater than 114 inches, the agency has decided to specify that the leading edge of the MDB make initial contact 20 inches behind the front axle. This will ensure that the

impact point is not too far back, relative to the front seat.

Ford and BMW provided very different comments concerning impact point tolerance. Ford argued that impact point tolerance is very important since the test results are significantly affected by whether the MDB contacts or misses the A-pillar. That commenter stated that while the NPRM did not specify an impact point tolerance, other agency documents specify ±3 inches. Ford argued that this should be reduced to ±1 inch. According to that company, a ±3 inch tolerance is believed to contribute to what it considers to be an unacceptable level of rear seat dummy response variability. Ford argued that a lower impact point tolerance could reduce test-to-test variability.

BMW argued for a larger impact point tolerance, on the order of magnitude of ±5 inches. That commenter stated that the MDB, because its wheels are crabbed and it is accelerated on a long path, cannot realistically be exactly aligned with the impact point at the moment of impact due to yaw forces acting on the barrier during its acceleration run. BMW stated that this is especially true in view of the fact that the wheels must be individually adjusted to achieve a barrier orientation within a permitted tolerance of ±1°, with respect to the 27° impact angle.

As a general matter, NHTSA agrees with Ford that tolerances should be as small as possible, in order to keep variability as low as possible. In establishing tolerances, however, the agency must also take into account the fact that too small tolerances may have the effect of invalidating test results, if the actual impact point falls outside the specified tolerance. NHTSA has reviewed recently-conducted testing and believes that a tolerance of ±2 inches is readily obtainable with current testing protocol. In response to Ford's comment, the agency has therefore decided to specify a tolerance of ±2 inches, instead of ±3 inches. This tolerance is set forth in section S6.12. The agency is not adopting a higher tolerance, as suggested by BMW, because a higher tolerance would unnecessarily increase test variability. The agency is not adopting a tolerance as low as ±1 inch, as suggested by Ford, because such a low tolerance could be difficult to meet and could have the effect of invalidating test results.

GM expressed concern that impact point repeatability may be difficult to achieve because MDB tracking is influenced by tire pressure. According, to that company, the MDB tends to bounce to one side of the tow system when the tire pressure exceeds 30 psi. GM stated that this could result in the center of the MDB striking the vehicle at a point more than four inches away from the intended impact point That company did not provide any data in support of its concern about this issue.

NHTSA notes that one of the MDB assembly drawings specifies that tire pressure is to be maintained at 32 psi. Except for the last few feet, the MDB's position relative to the struck vehicle is controlled by a rail. As discussed in the FRIA, the agency has conducted 28 full scale production vehicle tests, in addition to many research tests, with tires at 32 psi. The agency has not had difficulty achieving repeatability of the impact point. In addition, MVMA conducted 16 Ford LTD tests and Transport Canada conducted four tests using the agency's test procedure with tires at 32 psi without impact point variability problems. Given the agency's experience and that of MVMA and Transport Canada, and the lack of data in support of GM's position, NHTSA is not persuaded that there is a problem with respect to impact point variability.

B. Alternative Composite Test Procedure

In the NPRM, the agency noted that component test procedures may eventually be possible alternatives to full scale crash tests. The agency reviewed some of the work that has been conducted in this area and indicated that, while it believed the concept needs additional research, it encouraged the further development of this approach. NHTSA specifically solicited comments on this subject.

Numerous commenters, including U.S., European and Japanese manufacturers, argued that the agency should not adopt a full scale crash test but instead pursue a laboratory compliance procedure such as the European Composite Test Procedure (CTP). The CTP was developed by Volkswagen and proposed by CCMC in Europe. It is based on the concept of using a mathematical model to predict human response to vehicle crashes. The CTP utilizes a three-step quasi-static crush of the inner and outer side surfaces of a vehicle, combined with a lumped, two-mass computer model of the occupant to simulate the full scale crash and to predict injury risk.

Commenters argued that the CTP offers several advantages over a full scale crash test. These include potentially lower costs, the ability to use CTP early in the design process of a vehicle, and greater opportunity for harmonization.

After considering the comments, NHTSA believes that neither the CTP, nor a similar approach is appropriate for this rulemaking. The CTP is a relatively new test procedure that is still in its developmental and validation stages. NHTSA believes that it would take at least several years to complete the development, validation and evaluation of this approach. The pursuit of this approach as an alternative to the full scale crash test proposed by NHTSA would thus result in at least a several year delay in improved side impact protection, a consequence that the agency does not consider acceptable. Moreover, NHTSA believes that a full scale crash test is the best means of testing the real world performance of a vehicle.

C. Dummy Seating Procedure and Use of Safety Belts

NHTSA proposed detailed procedures for positioning the SID in crash tests. Among other things, the agency proposed that a test dummy be restrained during a test only if that dummy is located in a seating position that is equipped with an automatic safety belt. This provision was proposed because, although belt usage is increasing as a result of the passage of mandatory use laws and a growing awareness of safety on the part of consumers, restraint usage is unlikely to reach 100 percent. NHTSA indicated that it desired to assure protection for unrestrained occupants. The agency noted in the NPRM that recent accident data analyses indicate that belt restraints may be somewhat beneficial in side impacts.

The agency also noted that the unrestrained dummy is generally propelled to the far side of the vehicle in a side impact test, thus creating the potential of causing the far side door to open. Leaving the dummy unrestrained would thus aid in evaluating the capability of the far side door to remain closed during a side impact crash. The agency specifically sought comments on whether and why compliance testing should be conducted with restrained or unrestrained dummies.

Numerous commenters argued that test dummies should be restrained whenever any type of safety belt is provided. Some commenters argued that safety belt use is a more representative test condition. Volvo argued that tests with belts would better simulate reality, noting that the PRIA estimated belt use to range between 40 and 70 percent in 1995. Honda commented that safety belt use is representative of recommended use conditions, that both government and manufacturers are strongly recommending usage of safety belts, and

that many states now enforce mandatory use laws. Ford stated that testing with all dummies restrained is consistent with the widespread adoption of mandatory usage laws and other activities intended to encourage belt use in the United States. That company expressed concern that by testing without belts, NHTSA could send a message to consumers that belt use is unimportant. Ford also expressed concern that the proposed test condition encourages installation of automatic belts instead of air bags, since a test dummy would be restrained only in a seating position for which there is an automatic belt restraint.

Some commenters argued that leaving a test dummy unrestrained would, in any event, not have a significant effect on the injury criteria. Volvo stated that its testing shows that the belt is loaded late in the crash event at a time when the injury criteria maximum has already been reached. Austin Rover stated that the impact of the dummy on the far side of the vehicle would not likely cause the door to open, since the dummy does not strike the door with sufficient force to open a door which has not unlatched, and any other unlatching forces or accelerations would have diminished before the dummy had traveled across the vehicle.

Honda argued that use of the unrestrained dummy is not a satisfactory way to evaluate opening of the far side door. That company stated that the unrestrained dummy is not always propelled and does not always impact the far side door in a side impact test, and that it is unclear how the dummy impact affects door opening.

Ford commented that the use of the restraint system during testing reduces the potential for dummy damage resulting from adverse dummy kinematics after the dummy/car side interior interactions are completed. IIHS, however, argued that test dummies should not be restrained even for some types of automatic belts, since the usage of some such belts is relatively low.

After considering the comments, NHTSA has decided to specify use of all available belt restraints in side impact testing. The agency is persuaded that since the side impact test dummy accelerations used to calculate the TTI(d) and pelvic injury criteria occur before the belt system tightens to restrain the occupant, belt use or non-use does not make a significant difference with respect to the test criteria. The agency also believes that the use of all available safety belts is most consistent with its belt use policy and with state belt use laws. Finally, given increased belt usage, the agency believes that use of all available belts is more representative of the real world.

NHTSA received a number of other comments concerning the proposed dummy positioning procedure. GM stated that three of the proposed requirements cannot be met simultaneously. These include placing the adjustable seat back in the manufacturer's recommended position, keeping the dummy's head level, and resting the dummy's upper torso against the seat back. GM stated that, for its tests, it considered the most important requirement to be that the head remain level. It stated that to do this, the upper torso was placed against the seat back, and the seat back angle was adjusted until the dummy head was level.

NHTSA agrees that the three conditions cited by GM cannot be met simultaneously. The agency notes that keeping the dummy's head level was not included in the proposed dummy positioning procedure, as corrected in a **Federal Register** notice published on March 17, 1988 (53 FR 8782). Since the purpose of the dynamic side impact crash test procedure is to evaluate thoracic and pelvic protection, NHTSA believes that the pelvic angle is more important for assessing thoracic and pelvic protection than is a head leveling requirement. The agency therefore is not adopting the head leveling specification.

Ford commented that further clarification is needed concerning positioning of dummies in the rear seat. That company noted that, under the proposal, if possible, the rear dummy's midsagittal plane (i.e., a vertical plane through the center of the dummy) was to be the same distance outboard as the front dummy's midsagittal plane. If this condition could not be met, however, the rear dummy was to be positioned so that the outermost skin of its upper torso just touched the adjoining innermost surface of the vehicle. Ford stated that this alternative would be impossible to meet in some cases, because the location of some rear seat armrests preclude positioning the dummy's upper torso against the upper quarter panel surface while still positioning the dummy's midsagittal plane vertically. Ford also stated that it is not clear whether the term "innermost surface" means the broad trim panel surface or a smaller, localized trim feature.

In response to Ford's comment, NHTSA has modified the rear dummy positioning procedure for situations where the rear dummy's midsagittal plane cannot be positioned the same distance outboard as the front dummy's midsagittal plane. The procedure now specifies that, in such situations, the test dummy is positioned so that some portion of the test dummy just touches, at or above the seat level, the side surface of the vehicle, such as the upper quarter panel, an armrest, or any interior trim (i.e., either the broad trim panel surface or a smaller, localized trim feature).

NHTSA notes that the proposed rear dummy positioning procedure was developed for bench seats and is not appropriate for bucket or contoured seats. The agency has added a procedure for rear bucket and contoured seats. The procedure is similar to that proposed for front bucket seats. It specifies that (1) the upper torso of the test dummy rests against the seat back, and (2) the midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket or contoured seat.

Several commenters raised concerns about whether there is sufficient room in the rear seats of some cars to position the SID according to the proposed requirements. Ford stated, with reference to specifications for positioning the dummy's torso, that it believes there may be current or future vehicles which cannot accommodate the specified dummy or the SAE–826 H-point device (i.e., the device that would be used to locate the H-point for positioning the dummy) in the rear seat. That company suggested that NHTSA develop an alternative test procedure or exempt such vehicles from the requirement for testing with a rear-seated dummy. Porsche, in objecting to including rear-seat dummies in the test procedure, commented that there is not enough room in some cars for the dummies to be placed or to be positioned correctly. BMW commented that in certain small cars (e.g., 2 + 2 coupes), a 50th percentile SID cannot be accommodated according to the proposed requirements, due to inadequate space, although a smaller occupant could utilize such a seating position.

Volkswagen stated that, in some small vehicles, it may not be possible to position the proposed dummy in the rear seat in a natural position even though the rear seats contain "designated seating positions" capable of accommodating a person at least as large as a 5th percentile adult female. Volkswagen provided photographs which it says show that the head of the SID placed in a current vehicle rear seat interferes with the roof when positioned according to the proposed procedure. It provided other photographs which it says show positions where the roof does

not interfere with the head, but the dummy is still in an unnatural and unrealistic position and the H-point is not within the proposed limit.

NHTSA notes that in some vehicles where the roof has a steep slope, the dummy head may interfere with the roof. In such instances, the dummy head can be tilted so as to accommodate the test dummy without changing the specified orientation of the thorax midsagittal plane, or affecting the H-point. NHTSA does not believe that tilting the test dummy's head would have any impact on the ability of the dynamic side impact crash test procedure to evaluate thoracic and pelvic protection.

NHTSA has concluded, however, that there are some sport cars with rear seating areas that are so small that the SID dummy cannot be accommodated according to the specified positioning procedures, even if the head is adjusted fore-aft. The agency attempted to position the SID dummy in two cars identified by manufacturers as having potential problems in this area: A Volkswagen Corrado and an Audi Coupe Quattro. While NHTSA did not have difficulty in positioning the SID dummy in the rear of the Audi Coupe Quattro, it could not position the SID dummy in the Volkswagen Corrado according to the specified procedures.

Since it is necessary that standards be appropriate for all vehicle types to which they apply, NHTSA has decided not to apply the rear seat requirements to vehicles which have rear seating areas that are so small that the SID dummy cannot be accommodated according to the specified positioning procedures.

Based on review of vehicle sales data, the agency believes that less than one-half of one percent of passenger cars cannot accommodate the SID dummy in the rear seats. These excluded seating areas account for less than one fatality per year. While a relatively small safety problem, and while not subject to the requirements of this rule, the agency, nevertheless, believes that these seating positions will have improved levels of crash protection as a result of its action. Based on analysis of laboratory crash test data, when a vehicle is designed to provide side crash protection to the front seat occupant, the countermeasures also enhance rear seat crash protection. This occurs because the crash environment is more severe for the front seat occupant compared to the rear seat occupant. Thus, countermeasures to provide protection for the front seat will also enhance rear seat crash protection. Accordingly, the population of rear seat occupants in excluded vehicles, while small, will also benefit from the improved side crash protection required by this rule.

Volkswagen also commented that the rear seat dummy poses additional positioning problems which are unique to the rear seat. It stated that, in two-door vehicles, control of the dummy H-point is only possible on the in-board side. According to that commenter, the proposed positioning procedure does not specify from which side to control the H-point (or whether it should be controlled from both sides, which would in some cases be impracticable). Volkswagen stated that placing the one accessible side within the proposed H-point tolerance rotates the dummy and produces a variable and unreproducible seating position.

NHTSA assumes that the H-point would ordinarily be controlled from the outboard side. The agency has been able to control the H-point within the specified tolerance from the outboard side in its tests. However, the agency does not believe there is any reason that the H-point location cannot also be controlled from the inboard side, within the specified tolerance, if the test dummy is positioned correctly. Since NHTSA and manufacturers other than Volkswagen have been able to conduct a number of side impact tests without difficulties in controlling the H-point, the agency does not believe that it is a problem.

D. Variability

NHTSA has evaluated test procedure repeatability (same test replicated at the same site) and reproducibility (same test replicated at different sites). A certain amount of variability will always exist when different vehicles of the same make/model are subjected to a crash test. A portion of the variability is due to vehicle variability. Some variability can also result from aspects of the test procedure, including the dummy, the impact point, and the MDB honeycomb face. Because of test site variations (e.g., instrumentation), it is generally accepted that site-to-site test variability (non-reproducibility) is usually greater than the same site test variability (non-repeatability).

In the PRIA, the agency considered repeatability in terms of coefficients of variation (CV, the standard deviation divided by the mean) for available test data. As discussed in the PRIA, one set of tests relevant to repeatability was sponsored by MVMA. Sixteen full scale crash tests were conducted using 1985 Ford LTD's and NHTSA's side impact test procedure. While certain changes were made to the vehicles, and dummies were only placed in the front passenger seating position, the tests indicated that the repeatability of NHTSA's side impact test procedure was fully acceptable.

The PRIA also discussed the results of three matched sets of test data from NHTSA's full scale crash test series, two Chevrolet Citations, three Nissan Sentras and three Honda Civics.

Subsequent to issuance of the NPRM, the agency obtained additional test data relevant to repeatability, most of it from commenters. Some of the test results submitted by manufacturers are subject to claims of confidentiality.

Ford commented that, while few of the cars it has tested have been identical in their front seat configurations, it conducted tests of five compact 2-door, five mid-size 4-door and four mid-size 2-door vehicles (14 cars total) which had identical rear seat configurations and were tested in an identical manner. As discussed below, Ford cited data for these 14 cars in arguing that rear seat test dummy TTI(d) is extremely unpredictable. In light of its concerns about variability, Ford subsequently crashed six similar Ford Taurus vehicles using the proposed test procedure, as a controlled repeatability test program to estimate front and rear variability, and provided the results to the agency.

As part of an effort to assess the full scale test comparability of SID and BioSID, MVMA crashed 12 model year 1990 Pontiac 6000's, alternating the BioSID and SID in the front and rear seat positions, as well as in baseline and padded test conditions. The SID data from these tests are relevant to the repeatability of the proposed test procedure.

GM and Mercedes-Benz each submitted data for two vehicles of the same model. The agency also has data for three other pairs of cars, where one was tested by NHTSA and the other by the manufacturer.

Ford tested 14 cars, five 2-door compacts, five 4-door mid-size vehicles, and four 2-door mid-size vehicles. For the three vehicles classes, the CV for rear seat TTI(d) ranged from 17.0 to 23.1 percent (and averaged 20.4 percent). The CV for rear seat pelvic g's ranged from 7.0 to 14.2 percent (and averaged 11.3 percent). Ford stated that because of the unpredictability of the rear seat dummy responses, it has serious concerns about being able to comply with the proposed requirements. That company argued that it would have to design its vehicles to achieve values well below the requirements of the standard to have reasonable confidence that production vehicles would pass compliance tests.

Ford claimed, for example, that if NHTSA establishes an 85 TTI(d) limit, Ford would have to design the rear seats of their vehicles to achieve a TTI(d) level of 52 to ensure that the vehicle, if tested, would comply at the 20.4 percent variability that Ford has identified for the rear seat test dummy response. That company expressed concern that under these circumstances, it could not meet the proposed requirements with reasonable and practicable design changes to its product line. Ford also stated that in focusing on variability at the rear seating position, it did not mean to imply that it was satisfied that the test procedure is capable of producing adequately predictable test result measurements for the front seat dummy.

NHTSA notes that the Department addressed the issue of repeatability at length in its rulemaking adding automatic crash protection requirements for passenger cars to Standard No. 208, *Occupant Crash Protection*. See 49 FR 28962, 29004–29006 (July 17, 1984). Like the proposed side impact requirements, the Standard No. 208 requirements involve a full scale crash test using instrumented test dummies. The standard requires that the head injury criterion (HIC), calculated from measurements taken on the dummy, not exceed 1,000.

Ford's arguments about excessive variability in the proposed side impact test procedure are similar to the arguments made by manufacturers in the Standard No. 208 rulemaking. As discussed in the July 1984 notice adopting the current version of Standard No. 208, auto manufacturers argued that because large test result differences are encountered in repeated tests of the same car, they cannot be certain that all their production vehicles would be in compliance even when their development tests show passing results. The manufacturers argued that the test result variances are essentially due to deficiencies in the test procedures themselves as well as in the prescribed test dummy. They also argued that the only way they could assure compliance is to "overdesign" their vehicles, which they argued would result in excessive costs without safety benefit. The manufacturers argued that the standard was neither "objective" nor "practicable," citing several court decisions.

The Department concluded that Standard No. 208 was both objective and practicable, noting that manufacturers had not supplied data to support their claims of excessive test variability, nor demonstrated that the bulk of any variability is due to the test procedures and instruments and not due to vehicle-to-vehicle differences.

In their arguments on Standard No. 208, manufacturers cited NHTSA tests of 12 Chevrolet Citations under the agency's New Car Assessment Program (NCAP). The manufacturers focused on the CV of the driver HIC values—21 percent—and claimed that this was too large. They argued that with this large a CV, they would have to design their vehicles to achieve a HIC no higher than 560 to assure that 95 percent of their cars, when tested, would have HIC values below 1000.

The Department concluded that the manufacturers' argument was faulty. The Department noted that variability by itself is not a crucial factor for a manufacturer to be concerned about. Rather, it is the combination of variability and the mean (or average) value which can be cause for concern. Data showed that HIC's for both automatic belts and air bags would be sufficiently low as to make variability a moot issue for Standard No. 208.

The FRIA reassesses repeatability/reproducibility using the newly available data, as well as earlier data, where appropriate. Two data sets available to the agency were not used in the assessment: (1) NHTSA's Citation, Sentra, and Civic data and (2) Ford's data for five compact 2-door, five mid-size 4-door and four mid-size 2-door vehicles with identical rear seat configurations.

The three NHTSA data sets were not used because there were changes in the SID and the seating procedure between vehicle tests. These changes may have influenced the test results.

The Ford data sets (from the 14 cars) were not used because there were differences in front doors and front seats between tests. In order to be a reliable test of repeatability, the cars and test conditions must be identical, to the extent possible, for each test. NHTSA does not consider tests using cars with different front doors and different front seats to be valid repeatability tests for rear seat results, even if rear seat configurations are the same, since the differences in the front doors and front seats may affect the rear seat results. The agency therefore rejects the 20.4 percent CV figure cited by Ford as an estimate of rear seat TTI(d) variability.

Ford was aware that the 14 tests that it used to estimate variability were not identical, because the cars were different. However, Ford claimed that it examined the tested vehicles, the high-speed crash test films and electronically recorded data, for each of the 14 cars and found no evidence of vehicle performance differences, such as unusual structural deformation, that could have affected test-to-test variability. As indicated above, NHTSA does not accept the tests in question as valid repeatability tests, given the differences in the front doors and front seats. The agency also notes that even without unusual structural deformations, vehicle-to-vehicle differences that are not apparent from films can also cause differences in test results.

1. Front Seat Variability

As discussed in the FRIA, the MVMA data for model year 1985 Ford LTD's indicate that for front TTI(d) and front pelvic g's the maximum CV ranged from 0.6 to 9.4 percent. The MVMA data for three baseline model year 1990 Pontiac 6000's indicate a CV of 9.15 percent for front TTI(d) and 8.38 for front pelvic g's. For three Pontiac 6000's with added padding, the data indicate a CV of 7.78 percent for front TTI(d) and 5.84 percent for front pelvic g's. For the six Ford Tauruses tested by Ford, the data indicate a CV of 4.99 percent for front TTI(d) and 8.34 percent for front pelvic g's. All of the Pontiac 6000 tests were conducted at the same test site. The agency notes, however, that at least two SID dummies were used for the Pontiac 6000 tests, and at least four SID dummies made by two different manufacturers were used for the Taurus tests. Since different dummies are one of the differences that may exist between test sites, the use of different dummies helps demonstrate reproducibility.

The agency also has data for five pairs of other vehicles. The data were either provided in pairs or as a single test conducted under identical conditions to one performed by NHTSA. Two of the pairs involved tests conducted at the same test site. For two Mercedes-Benz's, the data indicate a CV of 0.65 percent for front TTI(d) and 6.17 percent for front pelvic g's. For another pair of vehicles, the CV figures are 0.00 percent and 10.34 percent, respectively.

The other three pairs involved tests at different test sites and are, therefore, useful for evaluating reproducibility. The front TTI(d) CV figures for these pairs are 1.14, 4.33 and 11.23 percent. The pelvic g's CV figures for these pairs are 5.00, 7.47 and 10.33 percent.

NHTSA believes the available data demonstrate high repeatability for front TTI(d) and front pelvic g's. As a general matter, the agency considers CV of less than 10 percent to demonstrate high repeatability. For the vehicle groups where there are more than two cars, the CV of both front TTI(d) and front pelvic

g's are below 10 percent. For the pairs of vehicles, which represent more limited data sets, the CV of front TTI(d) and front pelvic g's is in several cases well below 10 percent and never significantly exceeds 10 percent.

2. Rear Seat Variability

As indicated above, the repeatability tests conducted by MVMA using model year 1985 Ford LTD's did not include any rear seat dummies. The MVMA data for three baseline model year 1990 Pontiac 6000's indicate CV of 8.19 percent for rear TTI(d) and 4.55 for rear pelvic g's. For three Pontiac 6000's with added padding, the data indicate a CV of 7.76 percent for rear TTI(d) and 16.52 percent for rear pelvic g's. For the six Ford Tauruses tested by Ford, the data indicate a CV of 6.32 percent for rear TTI(d) and 15.51 percent for rear pelvic g's.

The tests of the pair of Mercedes-Benz's did not include rear seat data. For the other pair of vehicles where testing was conducted at a single test site, the CV figures are 0.54 percent for rear TTI(d) and 0.27 percent for rear pelvic g's.

For the three pairs involving tests at different test sites, the rear TTI(d) CV figures are 0.60 percent, 12.56 percent, and 16.06 percent. The rear pelvic g's CV figures are 11.75 percent, 12.06 percent, and 13.65 percent.

NHTSA believes that available data indicate acceptable repeatability for rear TTI(d). For the three vehicle groups where there are more than two cars, the CV for rear TTI(d) is well under 10 percent. For the four pairs of vehicles, the CV for rear TTI(d) is well under 10 percent in two cases, somewhat above 10 percent in another case, and as high as 16 percent in the fourth case. In assessing repeatability, the agency places greater weight on the groups of vehicles with more than two cars (n=6 for Ford Taurus and n=3 for the two Pontiac 6000 groups), since a pair of vehicles (n=2) represents an extremely limited data set. The agency notes that the 16 percent CV was measured for a single pair of vehicles and that there was a much lower CV for all of the other data sets. Given that the CV for rear TTI(d) is below 10 percent for all three vehicle groups, where there are more than two cars, and for two of the four pairs of vehicles, and that CV for the third pair is not very far above 10 percent, NHTSA considers rear TTI(d) variability to be very close to that for front TTI(d) and front pelvic g's

NHTSA recognizes that repeatability appears to be somewhat lower for rear pelvic g's, but still considers it to be acceptable. While the CV was well below 10 percent for one of the three vehicle groups involving more than two cars, it was 15.51 percent and 16.52 percent for the other two vehicle groups. Also, while the CV was well below 10 percent for two of the four pairs of vehicles, it was 11.75 and 13.65 for the other two pairs. Based on the limited available data, it appears that while CV for front TTI(d), front pelvic g's, and rear TTI(d) are generally below 10 percent, CV for rear pelvic g's may sometimes be as high as 15 to 16 percent.

NHTSA has never attempted to quantify what represents acceptable variability versus unacceptable variability. In the Standard No. 208 rulemaking, the Department requested comments on what level of variability was deemed "reasonable," given that some variability will always exist. Only Renault provided a quantitative answer, saying that "the variation coefficient must not exceed a maximum of 10 percent." Although Renault provided no justification for its recommendation, the Department noted that it was nearly identical to the variation contributed by the Standard No. 208 test procedures and dummy, according to Volvo and GM.

NHTSA considers the repeatability for both side impact injury criteria measurements in both front and rear seating positions to be acceptable. As discussed above, the agency believes that the available data indicate acceptable repeatability for front TTI(d), front pelvic g's, and rear TTI(d), as the available CV measurements for those three are, for the most part, below 10 percent. The agency believes that the available data indicate that the repeatability for rear pelvic g's is well within the acceptable range.

The agency also considered the repeatability data considered by the Department in the Standard No. 208 rulemaking. NHTSA notes that the CV for several groups of cars considered in that rulemaking were similar to or higher than the 15 to 16 percent CV experienced by some cars for rear pelvic g's. See Table III–7 of the Final Regulatory Impact Analysis for Standard No. 208, July 11, 1984. (While that table does not provide calculations of CV values, it does report the mean, standard deviation, and number of cars tested for each group, the terms from which CV is calculated.) Based on all available data, the agency considers the repeatability for both side impact injury criteria measurements in both front and rear seating positions to be similar to, or possibly better than, that considered and found acceptable by the Department for Standard No. 208. Moreover, manufacturers have now been complying with that standard's automatic crash protection requirements for several years, without any difficulties.

Given the above variability, NHTSA examined the practicability of the performance requirements adopted by this final rule, i.e., TTI(d) limits of 85 g for 4-door cars and 90 g for 2-door cars, with a pelvic acceleration limit of 130 g for all cars. Application of the effectiveness values set forth in the FRIA for various countermeasures to the 23 make/models used for estimating benefits indicates that the TTI(d) and pelvic g values can be brought below the limits being established in this final rule.

In light of Ford's particular concern about rear dummy variability, and the fact that available data indicate greater variability for the rear than the front (especially for pelvic g's), NHTSA also examined the relationship between the front and rear dummy responses. Based on NHTSA's 28 full scale tests, rear pelvic acceleration was 25 g's lower on average than front pelvic acceleration, and rear TTI(d) was 14 g's lower on average than front TTI(d). The agency believes these data indicate that it is easier to achieve lower pelvic g's and TTI(d) in the rear than in the front, which reduces the impact of the somewhat higher variability.

Finally, as was the case in the Standard No. 208 rulemaking, manufacturers have not demonstrated that the bulk of variability for any of the side impact criteria for the front and rear seating positions is due to the test procedures and instruments as opposed to vehicle-to-vehicle differences.

E. Test Surface

NHTSA also received a comment concerning specification of the test surface. GM argued that specification of the coefficient of friction of the tire/road interface is important for full scale vehicle crash tests, but was not specified by NHTSA in the NPRM.

NHTSA does not agree that a coefficient of friction must be specified in the regulation since the side impact crash forces greatly exceed the magnitude of tire/road sliding friction forces. Thus, variations in the coefficient of friction would have an insignificant or minor impact compared to other factors. For example, one load cell barrier test using the NHTSA MDB at 25 mph and a 26 degree crabbed impact angle produced a barrier face resultant load of 84,679 pounds. Assuming a sliding coefficient of 0.50, the lateral friction forces on the 3,000 pound car would be 1,500 pounds. In this example, the crash force level is over 50 times higher than

the tire/road friction forces for the struck vehicle. Even if the MDB-to-car resultant force were less than than that load cell resultant force (e.g., about 60,000 pounds), this force level would still be many times greater than the tire/road friction forces.

Further, the side impact crash sequence takes place in a small fraction of a second, and is over before the vehicle motion relative to the "driving" surface occurs. As a result, the friction forces have an insignificant effect on the test dummy measurements.

NHTSA concludes that the tire/road friction forces are an insignificant or minor effect in side impact crash testing. When compared to crash forces, they are negligible across the full range of peak and sliding coefficients of friction. For the above reasons, NHTSA does not believe that the coefficient of friction of the test surface needs to be specified in the rule.

VII. International Harmonization

As the automotive industry has become an increasingly worldwide industry, interest in harmonized safety standards has increased. With harmonized standards, manufacturers can more easily build the same product to sell in different parts of the world, and cost savings can be achieved in areas of vehicle design, production, inventory, and certification.

Many commenters expressed concern that the proposed side impact dynamic crash test requirements are substantially different than those being developed in Europe. Those commenters argued that NHTSA should give greater weight to harmonization.

NHTSA is committed to international harmonization where practical. As in other areas, NHTSA has considered the issue of harmonization for this rulemaking. The agency notes that the United States has generally been ahead of Europe in the area of dynamic side impact test requirements, both in terms of developing a dynamic side impact test procedure, and now in adopting a regulation based on that procedure.

NHTSA notes that harmonization would likely have been easier had Europe not developed a different test dummy, different barriers, and a different injury criterion than those developed in the United States. The agency has, however, carefully considered the European approach to determine whether it would be appropriate for a Federal motor vehicle safety standard.

One concern NHTSA has about the European approach is that the two European barriers are not representative of the striking vehicles in side impact crashes in the United States. The European barriers appear to be more representative of the lighter and smaller European passenger cars. As discussed in the separate notice on the MDB, the NHTSA MDB is representative of passenger cars and light trucks that are likely to be the striking vehicle in side impact collisions in the United States. In order to ensure that the new side impact dynamic crash test requirements result in appropriate countermeasures, and hence reduced fatalities and injuries in the real world, NHTSA believes the MDB should be representative of striking vehicles in the United States rather than representative of vehicles used in other nations.

NHTSA also notes that there are a number of characteristics associated with the European test procedure that make it inappropriate, at this time, for a U.S. safety standard. The European test dummy (EuroSID), while capable of assessing injury potential and providing insight into side impact crash occupant protection, needs further refinement before it can be used as a regulatory tool. These ongoing efforts include the development of biofidelity response corridors to assure the EuroSID responds in a human-like manner, the evaluation of the repeatability and reproducibility of the test dummy, and the demonstration of its durability in full-scale crash tests. The EuroSID is progressing in all of these areas. Additionally, the urethane foam face of the European barrier appears to break down and bottom out, creating unexpectedly high dummy acceleration responses due to the unrealistic crash conditions it imposes. Further, it is still unclear whether Europe itself will adopt side impact requirements based on a full scale dynamic crash test.

NHTSA remains committed to international harmonization where practical. However, NHTSA believes that pursuit of harmonization as an alternative to the proposed requirements would result in at least a several year delay in improved side impact protection, a consequence that the agency does not consider acceptable. For all of the above reasons, NHTSA does not believe that harmonization considerations should preclude the agency from issuing a final rule based on its proposal. However, as Europe continues to develop its side impact standards and test procedures, NHTSA will consider whether further rulemaking is appropriate.

VIII. Feasibility of "Countermeasures"

As discussed in the NPRM, NHTSA has performed a substantial number of vehicle crash tests both to examine the existing side impact performance of many cars, as evidenced by measurements of the TTI(d) and pelvic acceleration on the side impact test dummy, and to evaluate the effectiveness of various techniques ("countermeasures") to improve side impact performance. In particular, the research programs have concentrated on making production-feasible structural changes and adding additional padding to the interior surface of the vehicle's side door to improve side impact protection. As discussed in more detail below, this research has shown that either the use of structural modifications in combination with padding or the use of padding alone can significantly reduce the probability of thoracic and pelvic injuries.

The following discussion highlights several of the more important side impact research programs conducted by NHTSA. The details of these and other agency research programs are discussed more fully in the PRIA and FRIA. In 1977, NHTSA began a program to improve the side structure integrity for lightweight subcompact cars, using a 2-door Volkswagen Rabbit. The agency decided to concentrate its research efforts on light vehicles, because it anticipated having the greatest difficulty in improving the level of side impact protection in those vehicles. The agency also believed that any countermeasures developed for those vehicles could be adapted for use in larger and heavier vehicles. NHTSA chose the VW Rabbit after testing the side impact performance of three small front wheel drive vehicles. The peak thoracic and pelvic accelerations measured on the side impact test dummy seated in the Rabbit indicated the Rabbit to be an "average" performer in its class.

The research program, involving the Budd Company, developed four levels of structural modifications to the 2-door VW Rabbit, to investigate the effect of increased side strength on intrusion. Those levels were categorized by the weight that the modifications added to the car and were designated as lightweight, middleweight, heavyweight and "optimized" (the "optimized" version used parts that had performed well in tests of the three other designs, but had been reduced in weight). These structural additions focused on the front seat area; no structure was added to the rear quarter panel or in the C-pillar areas. Intrusion was reduced by a factor of nearly 50 percent (from approximately 20 inches to 10 inches) with the heavy and optimized weight designs, but the dummy peak

accelerations were not significantly altered.

Concurrently with its programs to improve structural integrity, NHTSA also conducted research at its Vehicle Research and Test Center in East Liberty, Ohio to select and evaluate interior padding. The interior padding was an "add-on" feature, so that the door structure did not require alteration to accommodate the padding. The agency assumed that manufacturers would incorporate these features in production vehicles by using the door structure itself and part of the door thickness so as to minimize the space taken from the occupant compartment.

In January 1981, NHTSA began another research effort, which was conducted in two parts. This was called the modified integrated vehicle (MIV) program. One part was conducted by VW to improve the side impact protection of a 4-door VW Rabbit and the other part was conducted by MCR Technology Inc., using the Chevrolet Citation. The program evaluated both structural modifications and padding changes, independently and in combination. The first phase of the research effort concentrated on developing "production feasible" improvements, which would add little weight to the vehicle. To evaluate the performance of the modifications, the agency conducted a series of tests on the Rabbit simulating a vehicle moving at 22 mph striking another vehicle moving at 11 mph. The impact angle was 60 degrees. The agency's MDB was used as the striking vehicle. These tests involved an unmodified VW Rabbit, a structurally unmodified Rabbit with additional interior padding, a structurally modified Rabbit with no additional interior padding, and finally, a structurally modified Rabbit with additional interior padding.

In the second phase of the MIV program, the agency tested the structurally modified and padded Rabbit in two additional impact configurations. The configurations simulated a vehicle moving at 30 mph striking another vehicle moving at 15 mph at impact angles of 60 degrees and 90 degrees. In these tests, a Chevrolet Citation was used as the striking vehicle. The results of these tests are discussed in the FRIA.

In summary, NHTSA's testing shows that it is possible to develop "production feasible" countermeasures that can reduce potential thorax and pelvic injuries in side impacts. Based on the results obtained in this testing, NHTSA has, as discussed below, developed estimates of the effectiveness of different side impact countermeasures in reducing injuries.

IX. Estimate of Portion of the Vehicle Fleet Needing Improvement To Achieve Compliance

NHTSA explained in the NPRM that, in addition to the testing which was done on the modified and unmodified Rabbits and Citations, the agency had also conducted a series of 20 tests on 12 different unmodified production passenger cars. The PRIA used the results from the tests of the production vehicles to estimate the percentage of the passenger car fleet that currently meets the proposed alternative levels of the standard.

After issuing the NPRM, the agency conducted eight additional production vehicle tests, using eight different models. One model was also tested by Transport Canada. In addition, the agency received test data on 25 additional models from four different motor vehicle manufacturers. The FRIA uses only data from the more recently designed models (model year 1984 and later) to estimate what percent of the fleet currently meets alternative side impact performance levels. There are data available on 23 models: 10 2-door models and 13 4-door models.

In assessing the changes needed in current vehicles to meet the standard, the agency has not calculated the effectiveness of modifications that only involve structural changes. There were six cases of comparable baseline versus "structure alone" tests. In three of these tests for the driver, the TTI(d) went up and in three tests, the TTI(d) went down. A number of other tests have shown relatively little or no benefit from structure alone countermeasures. Because of these results, the agency does not consider the structural countermeasure it developed to be a consistent means of reducing side impact injuries. This does not mean that countermeasures using only structural modifications will not work. It simply means that the approaches evaluated by the agency did not consistently work.

Table 3 shows the percentage of the current new model passenger car fleet that meets the various alternative levels of TTI(d) at different seating positions in a car. For additional explanation of the data underlying Table 3 and the other tables presented in this section, see chapter III, section C of the FRIA.

TABLE 3.—PERCENT OF THE FLEET MEETING ALTERNATIVE TTI(D) LEVELS

TTI(d)	Driver			Rear passenger		
	2-Dr.	4-Dr.	Total	2-Dr.	4-Dr.	Total
80	0.0	61.5	34.8	30.0	53.8	43.5
85	10.0	69.2	43.5	40.0	61.5	52.2
90	10.0	84.6	52.2	50.0	69.2	60.9
95	10.0	84.6	52.2	50.0	92.3	73.9
100	20.0	100.0	65.2	50.0	100.0	78.3
105	20.0	100.0	65.2	70.0	100.0	87.0
110	70.0	100.0	87.0	70.0	100.0	87.0
115	90.0	100.0	95.7	80.0	100.0	91.3

Table 4 presents estimates of the percentage of the fleet that would need various countermeasures to meet the alternative levels of TTI(d). The percentage of the fleet is derived by assuming the effectiveness of the countermeasures as follows: for drivers—padding is approximately 21 percent effective (i.e., padding reduces TTI(d) by 21 percent), structure and padding is about 30 percent effective, and heavyweight structure and padding is 43 percent effective. For rear passengers, padding alone is assumed to be 35 percent effective. The agency derived these effectiveness estimates from its research on the performance improvements resulting from the use of various side impact protection countermeasures in cars. The agency then applied these effectiveness estimates to the TTI(d) values obtained for each of the 23 production cars that were tested to determine which countermeasure would be needed for each vehicle at the alternative TTI(d) levels proposed for the standard.

TABLE 4.—PERCENT OF THE FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE TTI(D) LEVELS

TTI(d)	Driver				Rear passenger		
	None	Padding	Structure and padding	heavyweight structure and padding	None	padding	Structure and padding
				Two-Door Models			
80	0.0	20.0	70.0	10.0	30.0	60.0	10.0
85	10.0	20.0	70.0	0.0	40.0	50.0	10.0

TABLE 4.—PERCENT OF THE FLEET NEEDING VARIOUS COUNTERMEASURES TO MEET ALTERNATIVE TTI(D) LEVELS—Continued

TTI(d)	Driver				Rear passenger		
	None	Padding	Structure and padding	heavyweight structure and padding	None	padding	Structure and padding
90	10.0	80.0	10.0	0.0	50.0	40.0	10.0
95	10.0	90.0	0.0	0.0	50.0	50.0	0.0
100	20.0	80.0	0.0	0.0	50.0	50.0	0.0
105	20.0	80.0	0.0	0.0	70.0	30.0	0.0
110	70.0	30.0	0.0	0.0	70.0	30.0	0.0
115	90.0	10.0	0.0	0.0	80.0	20.0	0.0
Four-Door Models							
80	61.5	38.5	0.0	0.0	53.8	46.2	0.0
85	69.2	30.8	0.0	0.0	61.5	38.5	0.0
90	84.6	15.4	0.0	0.0	69.2	30.8	0.0
95	84.6	15.4	0.0	0.0	92.3	7.7	0.0
100	100.0	0.0	0.0	0.0	100.0	0.0	0.0
105	100.0	0.0	0.0	0.0	100.0	0.0	0.0
110	100.0	0.0	0.0	0.0	100.0	0.0	0.0
115	100.0	0.0	0.0	0.0	100.0	0.0	0.0
Combined Fleet							
80	34.8	26.1	34.8	4.3	43.5	52.2	4.3
85	43.5	21.7	34.8	0.0	52.2	43.5	4.3
90	52.2	43.5	4.3	0.0	60.9	34.8	4.3
95	52.2	47.8	0.0	0.0	73.9	26.1	0.0
100	65.2	34.8	0.0	0.0	78.3	21.7	0.0
105	65.2	34.8	0.0	0.0	87.0	13.0	0.0
110	87.0	13.0	0.0	0.0	87.0	13.0	0.0
115	95.7	4.3	0.0	0.0	91.3	8.7	0.0

Table 5 indicates the estimated percentage of the current fleet meeting various alternative standards for pelvic g's.

TABLE 5.—PERCENT OF FLEET MEETING ALTERNATIVE LEVELS FOR PELVIC ACCELERATION

Level	Driver			Rear passenger		
	2-Dr.	4-Dr.	Weighted total	2-Dr.	4-Dr.	Weighted total
130	30.0	91.7	63.6	80.0	69.2	78.3
150	60.0	100.0	81.8	90.0	92.3	95.7
170	90.0	100.0	95.5	100.0	92.3	95.7
190	100.0	100.0	100.0	100.0	92.3	95.7

Table 6 presents the percentage of the fleet that would need padding to meet the alternative levels of the pelvic g's standard being analyzed. Since for drivers, padding alone is approximately 35 percent effective, there is no need for any additional countermeasure. Similarly, for rear passengers, padding alone is approximately 33 percent effective, which is sufficient to meet the standard for all cars at all of the proposed pelvic g levels.

TABLE 6.—PERCENT OF FLEET NEEDING PADDING TO MEET ALTERNATIVE LEVELS OF THE STANDARD FOR PELVIC ACCELERATION

Pelvic g's	Driver		Rear passenger	
	None	Padding	None	Padding
Two-Door Models				
130	30.0	70.0	80.0	20.0
150	60.0	40.0	90.0	10.0
170	90.0	10.0	100.0	0.0
190	100.0	0.0	100.0	0.0
Four-Door Models				
130	91.7	8.3	69.2	30.8
150	100.0	0.0	92.3	7.7
170	100.0	0.0	92.3	7.7
190	100.0	0.0	92.3	7.7
Combined Fleet				
130	63.6	36.4	78.3	21.7
150	81.8	18.2	95.7	4.3
170	95.5	4.5	95.7	4.3
190	100.0	0.0	95.7	4.3

X. Costs

As a part of its research program on side impacts, NHTSA has done several major studies of the potential costs associated with improving side impact protection. The first cost study was based on work begun in 1980 with the Budd Company to develop several structural modifications for improving the side impact design of subcompact two-door sedans. As discussed earlier in this notice, the Budd Company developed four alternative side structure designs based on the 1976/1977 VW Rabbit two-door passenger sedan. The production version VW Rabbit was used as a baseline for comparing the weight, cost, and crash impact performance of the four modified design versions.

The four design concepts were categorized by the total added weight of the modifications to the car and were designated as a lightweight design, middleweight design, heavyweight design and an "optimized" design. The crash test results for the lightweight and middleweight designs showed that none of the structural modifications described above sufficiently improved side impact protection as measured by reductions in thoracic acceleration. The heavyweight and optimized designs showed promise of reducing side impact injuries and, consequently, the agency used those designs in calculating the costs associated with this rulemaking.

Subsequent to Budd's completion of this work, NHTSA sponsored several studies to analyze the costs and manufacturing feasibility of structural modifications and increased padding to improve side impact protection. These studies have concentrated on examining approaches that involve vehicle construction techniques and sophisticated tools used in efficient high-volume production. These studies found that the vehicle modifications examined by the agency could be simplified if a vehicle manufacturer planned to incorporate side impact protection features into a new vehicle design. In particular, the studies found that many of the parts used in the agency's original research program could be modified, combined, eliminated, or incorporated into a vehicle's basic structural members.

In addition to examining the costs of structural improvements, the agency has also analyzed the costs associated with the addition of padding. Both the costs and the weight changes derived from the modified vehicle tests conducted several years ago represent relatively high values. The primary purpose of the modifications tested was to reduce side door intrusion. However, as discussed above, the test results showed that structural improvements alone did not necessarily result in significant reductions in thoracic acceleration, as measured by TTI(d).

The agency believes that a more effective and efficient approach for reducing occupant thorax and pelvis injury in side impacts is to provide "equivalent padding" (either actual padding or modified, energy-absorbing sheet-metal structure) as necessary in the door area. This should be more cost-effective than making structural changes for these types of injuries. This has been demonstrated by actual production vehicles. For example, the 1987 Nissan Sentra incorporated significant improvements, at a cost of apparently less than $100 per vehicle over the earlier version of this model, to improve considerably both the frontal and side impact safety performance of the vehicle. Also, there are some cars tested by NHTSA that already have relatively good side impact performance for the driver (e.g., Spectrum 2-door with TTI(d) of 83.5 g, Caprice 4-door with TTI(d) of 57.5). Since a number of cars demonstrate very good side impact performance without adding special countermeasures, the agency believes that other vehicles could also be redesigned to improve performance at lower increases in consumer costs than shown in the analysis.

NHTSA has combined the estimates of the vehicle modification costs, including the fuel economy and secondary weight costs, associated with different types of side impact protection modifications, and the estimates of the percentage of the fleet that would need modifications to meet various thorax and pelvis acceleration levels. These total costs are summarized in Table 7. For additional explanation of the data underlying Table 7, see chapter V of the FRIA.

TABLE 7.—ESTIMATED COST SUMMARY, FRONT AND REAR SEAT OCCUPANTS—COMBINED FLEET

	Total vehicle cost in 1989 dollars including lifetime fuel cost penalties (without secondary weight effects)	Total vehicle cost in 1989 dollars including lifetime fuel cost penalties (with secondary weight effects)
	Per-Car Weighted Average	
80	83.5	120.8
85	72.4	104.8
90	35.2	48.6
95	17.0	22.2
100	13.2	17.2
105	11.7	15.0
110	5.8	7.6
115	2.7	3.6

The actual costs of the new requirements are expected to be lower than the estimates shown in Table 7, which are derived from the agency's somewhat outdated cost studies. The NHTSA tests showed that some existing vehicles could meet various levels of side impact safety performance with little modification. This suggests there are less costly ways of upgrading side impact protection.

Considering that most of the vehicles NHTSA has tested are not likely to be in the fleet 5 years after implementation of the final rule when the standard becomes fully effective, and that a phase-in schedule is being established, the agency believes that it is reasonable to assume that manufacturers would incorporate side impact safety improvements in the "clean-sheet design" of their new vehicle models to comply with the standard before or at the time of full implementation. This approach will likely entail research and development, engineering, and testing expenses in order to meet the standard, but perhaps, with a lessened variable cost per vehicle than the approach of making improvements to existing models.

NHTSA notes that its estimate of the average cost to achieve improved side impact crash protection does not apply to every vehicle. The agency-determined

countermeasures required to achieve a specific level of improved side impact crash protection depends on the level of protection in the current production car and its overall design. As would be expected, the cost and complexity to achieve a specific level is typically greater for current production vehicles with higher levels of TTI. The agency established the TTI levels in the rule based on balancing the safety benefits of improving side impact crash protection with the practicability of the countermeasures necessary to achieve the improvement.

The agency has not designed and tested countermeasures to prevent door openings during the compliance tests. Thus, specific cost estimates for measures to meet this provision are not available. However, based on its November 1982 evaluation of Standard No. 214, the agency believes that reductions in the possibility of door openings are feasible through structural improvements made to reduce the TTI(d) and pelvic g's. The 1982 evaluation found that the inclusion of side door beams reduced the incidence of door openings by 20–40 percent in single vehicle crashes and by 10–30 percent in multi-vehicle crashes. The agency believes that further reductions are possible as a by-product of measures adopted to comply with the injury criteria. Thus, the costs of reducing door openings are believed to be included in the above-mentioned costs, or, in the alternative, are estimated to be relatively small, on the order of $2–$4 per vehicle affected. It is estimated that only a small portion of the fleet would be so affected.

Ford commented that NHTSA assumed incorrectly in the NPRM that, because some current cars "nearly" meet the proposed requirements, it will be relatively easy and inexpensive to adapt other cars to meet the proposed regulation simply by copying the thick door designs of the cars that nearly meet the requirements. That commenter stated that, based on an extensive test program, it believes that compliance with the proposed requirements will be neither easy nor inexpensive. Ford argued further that "thicker doors" are not a practicable design solution for side impact protection in smaller, i.e., subcompact and compact, passenger cars.

Ford noted that it has conducted 24 full vehicle side impact crash tests and has participated in numerous similar tests conducted by MVMA. That company stated that when test-to-test variability is considered, vehicles must be designed to meet a TTI(d) of no more than 69 to be reasonably confident that a production vehicle, tested at random, would achieve a TTI(d) of 85 or less. Ford stated that only four of 24 Ford tests resulted in a TTI(d) of 69 or less. That commenter also stated that available test data indicate that dummy accelerations measured in small cars are substantially higher than those measured in large cars.

Ford stated that, based on its current knowledge, it has very low confidence of being able to achieve TTI(d)'s in the 80 to 100 range in its small cars in the foreseeable future (six years or less). That company stated that it does not know what design countermeasures can be used in a small car to attain such TTI(d) values without unacceptably increasing the car's width and/or decreasing its interior space. Ford also stated that the high variability in test data provided by the rear seat in small cars makes it questionable whether Ford could ever have high confidence in rear seat compliance test results for small cars. Ford stated that it was unable to comment accurately on the agency's cost and weight estimates until designs were identified for each of its car lines that could meet the various levels of TTI(d) and pelvic acceleration specified in the proposal. It indicated, however, that it believed the agency's cost estimates were low.

NHTSA notes that Ford's comment bears on a number of issues that are separately discussed in this notice. That company's concern about variability is discussed above in the section on test procedure repeatability. Ford's comment also bears on feasibility of the methods of compliance, on the agency's estimate of the portion of the vehicle fleet needing improvement to achieve compliance, and on costs. For convenience, the agency is responding to Ford's comment concerning these latter issues together.

As discussed above, NHTSA engaged in significant side impact research programs to make "production feasible" structural changes and add additional padding to the interior surface of a vehicle's side door to improve side impact protection. The program concentrated on small cars, because the agency anticipated that it would be particularly difficult to improve the level of side impact protection in those vehicles.

The results of the agency's research program were discussed in the NPRM and documented in detail in the PRIA. Among other things, the data presented in the PRIA indicate that TTI(d) and pelvic g levels below the limits established in this final rule can be achieved for small cars. See, for example, the data for modified Volkswagen Rabbits. Ford did not discuss the agency's extensive research program in its comments. Since NHTSA believes that its research program clearly demonstrated the feasibility of the "countermeasures" to meet the new side impact requirements, for small cars as well as large cars, it does not agree with the concerns expressed by Ford in this area.

Ford further asserted that it must design vehicles to meet a TTI(d) of no more than 69 to be reasonably confident that a production vehicle, tested at random, would achieve a TTI(d) of 85 or less. The agency notes that it is customary for a manufacturer to account for variation in a vehicle's design in any case where a specific test value must be met. The specific design values will vary among vehicles and among manufacturers. As discussed above in the section on repeatability, manufacturers have not demonstrated that they cannot obtain sufficiently low front/rear TTI(d) and pelvic g values as to eliminate concerns about variability. Moreover, application of the effectiveness values cited by the FRIA for various countermeasures to the 23 make/models used for estimating benefits indicates that the front/rear TTI(d) and pelvic g values can be reduced below the limits being established in this final rule.

The agency notes that to the extent that manufacturers design to levels below the specified limits, an additional number of vehicles could be affected by design changes. This could result in somewhat greater costs. However, there would also be additional benefits, since benefits continue to accrue at TTI(d) and pelvic g levels below the specified limits.

In addition to the costs associated with designing and producing the countermeasures needed to meet the new performance requirements, today's rule will also result in some test equipment costs. The SID dummy is basically a part 572 dummy with a modified thorax that uses thoracic and pelvic acceleration to measure impact loads. A SID dummy purchased new costs $26,250. This does not include approximately $6,000 of instrumentation, bringing the total cost to $32,250.

In addition to the cost of the dummy, there are costs associated with calibrating the dummy, purchasing replacement parts and performing the dynamic crash test. NHTSA estimates the total incremental cost per dummy per test application to be approximately $3,490. In addition, the estimated cost of

the NHTSA MDB is approximately $26,200 with instrumentation. This does not include the expendable aluminum honeycomb face and bumper. This item currently must be replaced after each test and is estimated to cost approximately $1,700, if purchased in quantities of 60 or more.

XI. Consumer Reaction to Side Door Padding

The PRIA reported the results of a study conducted to evaluate consumer reaction to side door padding. The study tested driver performance in both baseline Volkswagen Rabbits and Rabbits with increased side padding. In addition, the drivers in the study were asked about comfort. A survey was also taken of potential car buyers concerning the acceptability of additional padding. The PRIA concluded, in view of the existing limited data, that the majority of the population in smaller than average cars will be able to drive normally and ride in comfort with up to three inches of additional padding.The PRIA further concluded that consumers would accept the concept of such increased side door padding.

Several commenters raised issues concerning the representativeness of the test car and the drivers. As discussed in the FRIA, NHTSA believes that the Volkswagen Rabbit was reasonably representative and that the agency did a reasonable job of testing with individuals who are likely to have the most difficulty with additional padding, and that the conclusion that up to three inches of padding will not affect driving performance for most individuals is accurate.

XII. Selection of TTI(d) and Pelvic Acceleration Limits

NHTSA proposed a fairly wide range of values for side impact performance criteria. For TTI(d), the agency proposed a range of 80 to 115. For pelvic acceleration, the agency proposed a range of 130 to 190 g.

The Insurance Institute for Highway Safety (IIHS) urged NHTSA to adopt a TTI(d) limit of 80, stating that the agency's analysis indicated that TTI(d) of 80 would have a much greater effect than TTI(d) of 85 in reducing severe injuries and deaths. With respect to pelvic acceleration, that organization stated that the agency should not set a limit that would allow a significant degradation in existing performance. That commenter stated that a review of NHTSA's crash tests shows that the measured pelvic accelerations in unmodified production cars varied widely, with many accelerations exceeding the upper range proposed by the agency. However, IIHS also contended that the test data show that existing production cars can meet pelvic acceleration limits of less than 90 g's. IIHS recommended that NHTSA set a pelvic acceleration limit toward the lower end of the 90 to 130 g's range.

The Center for Auto Safety and Public Citizen (CFAS/PC) urged NHTSA to set limits for both TTI(d) and pelvic acceleration below the levels of the ranges proposed by the agency. Those organizations recommended an initial TTI(d) limit of 70, which they contend NHTSA's research has demonstrated to be feasible, and also recommended that the limit be reduced to 60 in two years. CFAS/PC recommended a pelvic acceleration limit of 90 g's, which they also believe NHTSA has demonstrated to be feasible.

Greater reductions in fatalities and serious injuries are associated with more stringent (lower) limits on TTI(d) and pelvic acceleration. Since the purpose of this rulemaking is to address the serious side impact safety problem, NHTSA generally favors lower, as opposed to higher, TTI(d) and pelvic acceleration limits. However, in selecting specific values for the final rule, the agency must consider both the increased costs associated with more stringent requirements and the technological feasibility of achieving lower limits for all subject cars.

In determining the appropriate levels for a final rule, the agency has specifically analyzed four combined alternatives for the thorax and pelvis, all of which represent TTI(d) and pelvic acceleration values at the lower ends of the proposed ranges.

The first alternative is TTI(d) = 80 and pelvic g's = 130. These are the most stringent values proposed by NHTSA. The FRIA estimates that 31.8 percent of all cars currently meet these levels at the driver's position. Only one out of the 23 models tested would need heavyweight structure and padding modification to meet these levels.

The second alternative is TTI(d) = 85 and pelvic g's = 130. The FRIA estimates that the TTI(d) level of 85 is currently being met by 36.4 percent of the fleet at the driver's position. No existing cars would need heavyweight structure and padding to achieve 85 TTI(d).

The third alternative is TTI(d) = 90 and pelvic g's = 130. The FRIA estimates that the TTI(d) level of 90 is currently being met by 40.9 percent of all cars at the driver's position. Most cars can achieve this level using only padding.

The fourth alternative is TTI(d) = 95 and pelvic g's = 150. The TTI(d) level of 95 can be achieved with padding alone by all cars. A pelvic g limit of 150 is currently being met by 81.8 percent of the cars at the driver's position and 95.7 percent of the cars at the rear passenger position.

The agency's estimates of costs and benefits for the four alternatives are presented in Tables 8 through 10. For a further explanation of the data underlying these tables, see chapter VII of the FRIA.

TABLE 8.—COSTS AND BENEFITS OF COMBINATIONS OF ALTERNATIVES (1989 DOLLARS) TWO-DOORS AND FOUR-DOORS COMBINED

TTI(d)	Pel. g's	Benefits		Costs per vehicle	
		Fatals	AIS 3-5 [1]	Without secondary weight	With secondary weight
Front and Rear Seats Combined					
1. 80	130	736	3.390	$83.5	$120.8
2. 85	130	581	2.900	72.4	104.8
3. 90	130	444	2.415	35.2	48.6
4. 95	150	326	1.522	17.0	22 2
Front Seats					
1. 80	130	654	3.071	66.6	97.2
2. 85	130	521	2.657	56.2	82.3
3. 90	130	399	2.244	20 7	28.2
4. 95	150	291	1.401	12.4	16.1

TABLE 18.—COSTS AND BENEFITS OF COMBINATIONS OF ALTERNATIVES (1989 DOLLARS) TWO-DOORS AND FOUR-DOORS COMBINED—Continued

TTI(d)	Pel. g's	Benefits		Costs per vehicle	
		Fatals	AIS 3-5 [1]	Without secondary weight	With secondary weight
REAR SEATS					
1. 80	130	82	319	16.9	23.7
2. 85	130	60	243	16.2	22.7
3. 90	130	45	171	14.5	20.4
4. 95	150	35	121	4.6	6.1

[1] Note: Included in the AIS 3-5 totals are AIS 2 pelvic fractures.

TABLE 9—COSTS AND BENEFITS OF COMBINATIONS OF ALTERNATIVES (1989 DOLLARS) TWO, DOORS

TTI(d)	Pel. g's	Benefits		Costs per vehicle	
		Fatals	AIS 3-5 [1]	Without secondary weight	With secondary weight
Front and Rear Seats Combined					
1. 80	130	510	2.658	$179.2	$263.7
2. 85	130	456	2,450	155.4	228.7
3. 90	130	387	2,186	67.3	94.3
4. 95	150	296	1,445	35.6	46.3
Front Seats					
1. 80	130	459	2.451	151.9	224.5
2. 85	130	411	2,278	129.9	192.0
3. 90	130	347	2.047	43.7	60.1
4. 95	150	262	1,336	26.3	34.0
Rear Seats					
1. 80	130	51	207	27.3	39.2
2. 85	130	45	172	25.5	36.7
3. 90	130	40	139	23.6	34.2
4. 95	150	34	109	9.3	12.3

[1] Note: Included in the AIS 3-5 totals are AIS 2 pelvic fractures.

TABLE 10.—COSTS AND BENEFITS OF COMBINATIONS OF ALTERNATIVES (1989 DOLLARS) FOUR-DOORS

TTI(d)	Pel. g's	Benefits		Costs per vehicle	
		Fatals	AIS 3-5 [1]	Without secondary weight	With secondary weight
Front and Rear Seats Combined					
1. 80	130	226	732	$19.7	$25.7
2. 85	130	125	450	17.1	22.4
3. 90	130	57	229	13.8	18.1
4. 95	150	30	77	4.7	6.1
Front Seats					
1. 80	130	195	620	9.7	12.4
2. 85	130	110	379	7.1	9.1
3. 90	130	52	197	5.3	6.9
4. 95	150	29	65	3.2	4.1
Rear Seats					
1. 80	130	31	112	10.0	13.3
2. 85	130	15	71	10.0	13.3
3. 90	130	5	32	8.5	11.2
4. 95	150	1	12	1.5	2.2

[1] Note: Included in the AIS 3-5 totals are AIS 2 pelvic fractures.

In considering alternatives, NHTSA notes that there are large differences in cost as the TTI(d) level decreases. The largest difference in TTI(d) is from 90 g to 85 g. This occurs because about 70 percent of the two-door models need structure and padding to achieve B5 g, while only 10 percent need these countermeasures to achieve a TTI(d) of 90 g.

While costs increase as TTI(d) decreases, benefits also increase. Given the greater reductions in fatalities and serious injuries that occur as TTI decreases (e.g., benefits at TTI = 80 g include 736 fewer fatalities, as compared to 581 fewer fatalities at TTI = 85 g, and 444 fewer fatalities at TTI = 90 g), NHTSA favors the lower ends of the proposed ranges even after taking into account the higher costs.

Another important issue, however, is technological feasibility. In particular, based on its review of the record,

NHTSA is concerned about the ability of manufacturers to achieve TTI(d) lower than 90 g for all of their two-door cars, and lower than 85 g for all of their four-door cars.

NHTSA believes that it is generally more difficult for manufacturers to achieve lower TTI(d) for two-door cars than for four-door cars. The reason for this is that the side structure and geometry of two-door cars is different from four-door cars. For example, since the door on a two-door model is typically wider than on a four-door model, it is more difficult to design as strong a structure for the door on the two-door model. Taking into account the confidential data submitted by the manufacturers and other available data, the agency has six sets of data on two-door and four-door versions of the same model. These data indicate that the driver dummy injury measurements in a two-door car are about 14 percent higher than in a four-door car. NHTSA also observes that of 22 two-door cars for which the agency has data, only one had driver TTI(d) less than 80 g, only two had less than 85 g, and only five had less than 90 g.

The agency also believes that variability should be taken into account in selecting performance limits. As discussed above in the section on repeatability, a certain amount of variability (both vehicle-to-vehicle variability and test procedure variability) will always exist when different vehicles of the same make/model are subjected to a crash test. Moreover, since each vehicle is required to meet a specified performance limit, it is normal for a manufacturer to account, in a vehicle's design, for such variation. While the specific design values will vary among vehicles and among manufacturers, vehicles will generally be designed to values somewhat below those specified by a particular standard.

The issue of variability is related to actual costs and benefits. As indicated above, to the extent that manufacturers design to levels below the specified limits, there could be somewhat greater costs. However, there would also be additional benefits, since benefits continue to accrue at TTI(d) and pelvic g levels below the specified limits.

NHTSA does not agree with CFAS/PC's argument (for TTI(d) and pelvic acceleration) and IIHS's argument (for pelvic acceleration) that the agency's research demonstrates that performance limits could be set far below the levels of the proposed ranges. In setting performance limits that must be met by all cars, the agency must consider all available data and not focus exclusively on test results for a very small number of cars. Also, since each car must meet a specified performance limit, the agency must take variability into account.

Based on its review of all available data, NHTSA has decided to adopt a TTI(d) limit of 85 g for 4-door cars and 90 g for 2-door cars. The pelvic acceleration limit is being set at 130 g for all cars. This represents a combination of the second and third alternatives discussed above. These requirements will result in significant safety benefits, and the agency is convinced that all cars can be designed to meet the requirements. The agency is not adopting less stringent requirements in view of the smaller benefits that would result. NHTSA believes the record does not justify setting more stringent requirements at this time, given uncertainties as to whether manufacturers could meet such requirements for all of their cars.

Given the possible additional safety benefits that could result from lower TTI(d) limits, however, NHTSA plans in the future to reevaluate the feasibility of lower TTI(d) limits. Both the agency and manufacturers will then have considerably more information about the countermeasures that can be used to improve side impact protection and their effectiveness. The agency therefore plans to conduct such an evaluation at that time.

NHTSA's estimates of costs and benefits for the performance requirements being adopted today are presented in Table 11. For a further explanation of the data underlying this table, see chapter VII of the FRIA.

TABLE 11.—Costs and Benefits of Final Rule

(1989 dollars)

	Benefits		Costs per Vehicle	
	Fatals	AIS 3-5 [1]	Without secondary weight	With secondary weight
Total benefits (2-doors and 4-doors combined/front and rear seats combined)	512	2,636	$37.1	$51.2
2-doors and 4-doors combined/front seats	457	2,426	21.7	29.5
2-doors and 4-doors combined/rear seats	55	210	15.4	21.7
2-doors/front and rear seats combined	387	2,186	67.3	94.3
2-doors/front seats	347	2,047	43.7	60.1
2-doors/rear seats	40	139	23.6	34.2
4-doors/front and rear seats combined	125	450	17.1	22.4
4-doors/front seats	110	379	7.1	9.1
4-doors/rear seats	15	71	10.0	13.3

[1] Note: Included in the AIS 3-5 totals are AIS 2 pelvic fractures.

XIII. Inclusion of Rear Seat Performance Requirements

Numerous commenters argued that NHTSA should not include rear seat performance requirements in a final rule The main reason cited by commenters relates to the low occupancy of rear seats, and hence to the lower benefits of rear seat as compared to front seat requirements. Toyota argued, for example, that studies of accident data demonstrate that of the total number of occupant side impact injuries, the percentage of rear seat occupants is small, and that it is therefore not cost-effective to require side impact protection in rear seats. Volkswagen stated that a NHTSA study of safety belt use indicated that the left rear and right rear seats in passenger cars are occupied in only 2.0 and 1.7 percent of trips by cars, respectively. That commenter stated that NHTSA has not identified or justified the rear seating position as requiring additional protection. Volkswagen expressed concern that a second dummy doubles the complexity of data collection and the potential for lost channels. That company also cited dummy positioning problems, a subject addressed above, as a reason to eliminate rear seat performance requirements. Rolls-Royce

stated that the structural countermeasures provided for the front seating position are likely also to be effective for rear seats, and that the interior padding countermeasures required for the front compartment will most likely be similarly provided for the rear compartment, both as good engineering practice and for reasons of design symmetry and style.

NHTSA recognizes that the benefits of improved side impact performance are considerably lower for rear seats than front seats, given the low occupancy of rear seats. The costs are also lower, however. As indicated in Table 11, above, the costs per vehicle associated with the alternative requirements being adopted today are about $22 for front seats versus $15 for rear seats. (With secondary weight, the costs are about $30 and $22, respectively.) Moreover, NHTSA believes that the benefits associated with rear seat requirements are considerable, 55 fewer fatalities and 210 fewer serious-to-critical injuries each year. While Rolls-Royce speculates that manufacturers would provide similar protection in rear seats as for the front seats, such similar protection would not be ensured without requiring it in the final rule. The agency concludes that rear seat side impact performance requirements are justified.

XIV. Leadtime/Phase-in

The leadtime needed to meet the new side impact requirements varies depending upon what countermeasures are necessary for particular models. As discussed in the NPRM, for vehicles needing "padding only" countermeasures, NHTSA estimates that the normal leadtime to design, tool and test new interior trim panels and armrests is approximately 14 to 18 months. For vehicles requiring either structure and padding or heavyweight structure and padding, greater leadtime is required. In cases involving only relatively minor changes in design and tooling to the doors, "A" and "B" pillars, side rails, etc., needed leadtime probably will not exceed two years. However, some structure/padding upgrade designs may require complete new body structural designs. For these models, four to five years of leadtime may be necessary in order to minimize diversions of engineering resources from normal planned product decisions, interruption of planned new model changes, and retooling and production costs.

NHTSA stated in the NPRM that it believed that the best approach to addressing the varying leadtime requirements was to phase-in the standard. The agency noted that this would allow manufacturers that can use the relatively straightforward padding approach in some of their models to adopt that countermeasure in the early years of the phase-in, while providing sufficient time for manufacturers to design, develop, and produce significant structural modifications for those vehicles that need major changes.

NHTSA proposed that the new requirements be phased-in according to the following implementation schedule:

10 percent of all cars manufactured during the first full production year (September 1 to August 31) beginning more than 24 months after the issuance of the final rule;

25 percent of all cars manufactured during the second full year beginning after that 24-month period;

40 percent of all cars manufactured during the third full year after that 24-month period; and

100 percent of all cars manufactured on or after the beginning of the fourth full year after that 24-month period.

While the proposed regulatory text did not specify the terms of the phase-in, NHTSA indicated that it contemplated adding regulatory text along the lines used to adopt the phase-in of Standard No. 208, *Occupant Crash Protection*. The agency requested comments on that approach.

Manufacturers supported a phase-in. Ford recommended that provisions like those in Standard No. 208 relating to production volumes (see S4.1.3.2.2), carry-forward credits (see S4.1.3.4(b), (c) and (d)), and cars produced by more than one manufacturer (see S4.1.3.5) be adopted.

Honda argued that a longer phase-in should be provided. That commenter stated that it is not appropriate to apply the same phase-in as was specified for Standard No. 208, since neither NHTSA nor manufacturers have the experience regarding the determination of energy absorption and the relationship between the internal wall of the vehicle and the dummy that was available with respect to Standard No. 208. Honda suggested that at least one more step be provided in the phase-in.

Peugeot argued that the proposed phase-in schedule would in reality require those manufacturers who have only one model on the American market to comply in 100 percent of their vehicles sold in the first year of the phase-in, only two years after the final rule has been promulgated. That company stated that protection in side impacts is much more difficult to insure than in frontal impacts, because the available space to absorb the energy is smaller. Peugeot stated that, depending on the levels adopted for the proposed performance requirements, five years leadtime might be required. Peugeot suggested that an alternative phase-in schedule be provided for manufacturers which comply with 100 percent of their vehicles at initial application. Similar concerns were expressed by Austin Rover and Rolls-Royce.

NHTSA disagrees that a longer phase-in is needed than for Standard No. 208. While Honda argued that neither the agency nor manufacturers have as much experience in this area, NHTSA believes that its research program has sufficiently identified the kinds of countermeasures that are necessary to meet the new requirements. Further, the agency believes that the phase-in provides adequate time for manufacturers to add padding and make structural changes, as necessary, and to certify compliance for their vehicles.

NHTSA believes that the proposed phase-in schedule can be viewed as being not necessarily any more difficult for single line manufacturers than for large manufacturers. Since the proposed phase-in schedule requires at least 10 percent of a manufacturer's cars to comply with the new side impact requirement in the first year of the phase-in, in practice each manufacturer must bring at least one model into compliance for that year. Viewed in this way, the burden on a manufacturer with only one model in the U.S. market to bring one model into compliance for the first year may be regarded as not being any different than that of a manufacturer which sells many models. NHTSA further notes that the phase-in for Standard No. 208 had similar provisions and that manufacturers with a limited number of models in the U.S. market were able to comply with that Standard. No manufacturer provided evidence that it could not meet the proposed requirements for at least one model with two years leadtime.

On the other hand, the agency recognizes that a single model represents all of a single line manufacturer's production and only a small portion of a multi-line manufacturer's production. It also recognizes that a greater portion of a single line manufacturer's engineering expertise and other resources will be called upon to bring that single line into compliance than a multi-line manufacturer will have to use to achieve compliance for a single line. The same points are true, albeit to a lesser extent, for a multi-line foreign manufacturer importing only a single model line into the United States.

The agency has identified an alternative compliance schedule which it believes would help meet the concerns

of single line manufacturers, while also being consistent with the need for motor vehicle safety. Under this option, a manufacturer would not need to meet the new requirements for any cars during the first year of the phase-in, but would then be required to meet the requirements for all of its cars beginning with the second year of the phase-in. A manufacturer choosing this option would thus have three years leadtime to meet the new requirements. While this option would be available to all manufacturers, the agency believes that it would not be feasible for the larger manufacturers to comply with it. NHTSA believes that the option would be consistent with the need for motor vehicle safety, since the number of cars meeting the new requirements during the three-year phase-in period would be considerably higher under this option than under the other schedule.

CFAS/PC argued that the proposed phase-in schedule is an example of NHTSA being "far too solicitous of the wishes of auto company managements and far too indifferent to the safety needs of the public." Those commenters questioned whether there needs to be any phase-in at all, stating that the agency has not made an adequate case for the lengthy phase-in it proposed. They also argued that if there is a phase-in, small and medium size cars should be phased in first since the fatality rates in side impact crashes for those cars is twice the fatality rate in large cars.

NHTSA notes that one reason a phase-in is appropriate is that most manufacturers have many models subject to the new requirements. These manufacturers must design and produce the necessary modifications to meet the new requirements for each of their models. However, the same engineering resources and testing facilities may be needed for all of the models, and cannot be used simultaneously. Given the complexity of the new side impact requirements, the agency believes that the length of the proposed phase-in is appropriate. With respect to CFAS/PC's suggestion that the requirements be phased in for smaller cars first, NHTSA notes that the requirements are generally more difficult to meet for small cars than large cars. If the requirements were phased in for smaller cars first, it might therefore be necessary to begin the phase-in at a later time. The agency believes it is appropriate to permit manufacturers flexibility in this area.

After considering the comments, NHTSA has decided to adopt the proposed phase-in schedule, while also providing the alternative compliance schedule discussed above. More specifically, each manufacturer's passenger cars manufactured on or after September 1, 1993, for sale in the United States, will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles manufactured during the 12 month period beginning September 1, 1993;

25 percent of automobiles manufactured during the 12 month period beginning September 1, 1994;

40 percent of automobiles manufactured during the 12 month period beginning September 1, 1995; and

All automobiles manufactured on or after September 1, 1996.

Under the alternative compliance schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

NHTSA notes that while the final rule establishes different TTI(d) limits for two-door cars and four-door cars, manufacturers need not meet the phase-in requirements separately for these two types of cars. For example, during the first year of the phase-in, a manufacturer does not need to have 10 percent of its two-door cars and 10 percent of its four-door cars meet the new requirements. The 10 percent requirement applies to the manufacturer's fleet as a whole, and could be met entirely by two-door cars or four-door cars, or by a combination of the two types of cars.

As suggested by Ford, the agency has included provisions similar to those in Standard No. 208 for production volumes and cars produced by more than one manufacturer. In cases where passenger cars are manufactured by two or more companies, manufacturers may determine, by contract, which of them will count such vehicles. Two rules of attribution apply in the absence of such a contract. First, a passenger car which is imported for purposes of resale is attributed to the importer, which will be responsible for meeting the percentage phase-in requirements and for making the necessary reports. This applies, of course, to both direct importers as well as importers authorized by the vehicle's original manufacturer. (In this context, direct importation refers to the importation of cars which are originally manufactured for sale outside the U.S. and which are then imported without the manufacturer's authorization into the U.S. by an importer for purposes of resale. The Vehicle Safety Act requires that such vehicles be brought into conformity with Federal motor vehicle safety standards.) Under the second attribution rule, a passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, is attributed to the manufacturer which markets the vehicle. These two attribution rules generally attribute a vehicle to the manufacturer which is most responsible for the existence of the vehicle in the United States, i.e., by importing the vehicle or by manufacturing the vehicle for its own account as part of a joint venture, and marketing the vehicle.

NHTSA has decided not to include provisions for carry-forward credits. For the Standard No. 208 phase-in, the agency decided that it would be appropriate to permit manufacturers that exceeded the minimum phase-in requirements in earlier years to "count" those extra vehicles toward meeting the minimum percentage requirements of later years. The agency concluded that such a credit would encourage the early introduction of larger numbers of automatic restraints. One difference between the Standard No. 208 phase-in and the side impact phase-in is that almost all cars needed the addition of automatic belts or air bags in order to meet Standard No. 208, while many vehicles do not need any changes to meet the new side impact requirements. If carry-forward credit provisions were established for the side impact phase-in, manufacturers might be able to build up credits during the early years of the phase-in by using cars which already meet the standard and thereby avoid making the necessary changes to meet the full percentage requirements in the later years of the phase-in. For this particular rulemaking, the agency therefore concludes that carry-forward credit provisions would be inappropriate.

XV. Retention of Related Requirements in Standard No. 214 and Other Standards

In the NPRM, the agency requested comments on retaining the existing requirements of Standard No. 214 if the proposed new performance requirements were adopted. For many years, the standard has required each side door to resist crush forces that are applied by a piston pressing a steel cylinder against the door's outside surface in a laboratory test. NHTSA's research has shown that the existing requirements of the standard have been effective in reducing fatalities and injuries in single vehicle impacts. The agency believes that the primary reason for the effectiveness of the current standard is that it reduces intrusion in the vehicle. In particular, the added side

door beam helps to keep a pole, tree, guardrail or other fixed object from intruding into the occupant's seating position and from hitting the occupant. Given the effectiveness of the existing requirements, the agency indicated that it contemplated retaining them.

Numerous commenters argued that the existing requirements of Standard No. 214 should be deleted as superfluous if dynamic test requirements become effective. Some commenters argued that the existing requirements are not the best means for addressing pole impacts. Commenters also suggested that the retention of the existing requirements might make it more difficult to meet the new requirements.

Ford argued that the existing Standard No. 214 provisions should be retained because they have proven effective in reducing injuries and fatalities resulting from single vehicle side impacts into poles and trees. That company stated that the proposed full vehicle crash testing does not address concentrated loading, such as by poles and trees, which account for approximately a quarter of side impacts. Ford also argued, however, that changes should be made in the existing requirements to make them more realistic.

After considering the comments, NHTSA has decided to retain the existing requirements of Standard No. 214. The agency concludes that the existing requirements have proven to be effective and to provide benefits in single vehicle crashes that would not necessarily be provided by the new dynamic requirements. NHTSA is not aware of any evidence indicating that compliance with the existing requirements will make it difficult to meet the new requirements. Moreover, those current models which already meet the new requirements also meet the existing requirements. NHTSA does not consider changes to the existing requirements or alternative ways of addressing pole impacts to be within the scope of the NPRM.

The NPRM also requested comments on whether to retain the requirements of Standard No. 201, *Occupant Protection in Interior Impact*, concerning armrests. That standard sets forth various requirements for armrests, including ones which require armrests to be constructed with energy-absorbing material.

Several commenters argued that it is unnecessary to retain the armrest requirements of Standard No. 201 once a dynamic side impact test requirement becomes effective. Those commenters argued that the armrest requirements would be duplicative.

After considering the comments, however, NHTSA has decided to retain the Standard No. 201 requirements. The new dynamic requirements primarily address hard thorax injuries, which include some, but not all abdominal injuries. NHTSA believes that the Standard No. 201 requirements provide benefits that might not be provided by the dynamic test requirements of Standard No. 214. As indicated above, the SID dummy was not designed with an abdominal load sensor. Therefore, the proposed test procedure might not pick up a concentrated load applied to the abdomen, such as might occur from an armrest impacting an occupant in a crash. NHTSA therefore believes that it is appropriate to continue to specify separate requirements for armrests to help ensure that they are not overly aggressive in crashes.

XVI. Limitation on Intrusion

In the NPRM, the agency requested comments on whether it should adopt a separate limitation on the intrusion that occurs during the proposed dynamic side impact test.

Manufacturers argued that the agency should not adopt a limitation on intrusion. Ford stated that compliance with the current Standard No. 214 test requirement and the proposed test requirements would inherently limit the amount of intrusion. That commenter argued that there is no need for an additional requirement that is design restrictive. Nissan stated that there is no need for superimposing an intrusion restriction upon that of dummy readings. That company stated that since NHTSA's real intent is to lower dummy readings, the manufacturers should be provided with design flexibility. Volvo stated that, according to its tests, the amount of intrusion does not directly translate to injuries measured in the occupants. That commenter stated that it is the dynamic behavior of the deformation and the amount of intrusion during the first 30 milliseconds of the side impact crash that is of importance for the injury criteria levels and that it is not evident that the amount of residual deformation correlates to the dynamic event. Volvo expressed concern that adding a requirement on the amount of deformation could create a risk of sub-optimization for TTI(d) or pelvic G's. Austin Rover stated that a limit on intrusion would not serve a useful purpose. That company stated that the injuries sustained by occupants in the proposed test are due to the occupant being accelerated sideways by the inside surface of the vehicle. Austin Rover argued that injuries sustained by intrusion would more likely be caused by crushing the occupant between the side of the vehicle and some other fixed part of the vehicle. That commenter stated that in practice the intrusion seen in the test is not sufficient for this to occur.

IIHS noted that the agency had proposed to retain the existing crush resistance requirements of Standard No. 214, but urged NHTSA to supplement those requirements with an intrusion limit in the new barrier-into-car test. That commenter stated that the purpose of the intrusion limit should be to reduce the possibility of localized intrusion, which might cause penetrating injuries that would not be measured by the proposed TTI(d) performance criterion. The Center for Auto Safety and Public Citizen recommended that NHTSA specify a maximum intrusion distance such as the 18 inches in the present static standard which would protect against injuries not measured by the proposed TTI(d) or pelvic g's performance criteria.

After considering the comments, NHTSA has decided not to adopt a limitation on intrusion. The agency notes that an 18-inch limitation on intrusion would not appear to add any protection because intrusion is generally less than 18 inches in side impact tests using the proposed procedure. Localized intrusion does not occur in the test because the uniform MDB face loads the door laterally, as the MDB slides toward the rear, and there are no protruding structures on the barrier face to cause such intrusion. Moreover, intrusion in the dynamic side impact test has not been correlated to injury, and an intrusion limitation might not serve any purpose.

XVII. Stretch Limousines

Superior Coaches, an alteration manufacturer of limousines, expressed concern that the proposed requirements would result in economic hardship for it. That company indicated that it manufactures limousines by altering various makes of complete, certified passenger cars. All of the passenger cars are purchased as four-door sedans. The original vehicle is cut transversely behind the center pillar, and the underbody and roof construction are extended. Additional right and left center pillars and right and left side doors are added. Superior Coaches indicated that it altered several different models of cars and expressed concern that it would have to crash test each model.

NHTSA has considered whether it should apply the new dynamic crash requirements to stretch limousines.

These vehicles differ from other passenger cars in two ways: (1) They are considerably longer, and (2) they have a variety of rear seating configurations.

The agency has concluded that the new requirements are appropriate for the front seats of stretch limousines. The front seats of these vehicles are no different than the front seats of other passenger cars. Moreover, the test procedure evaluates the side impact protection of the front seats in the same manner as for any other passenger car.

NHTSA has concluded that the test procedure is not appropriate for the rear seats of stretch limousines. After the stretching, the primary rear seats are typically so far back from the MDB impact point that the side impact protection provided for those seating positions cannot appropriately be evaluated by the test procedure. The variety of seating configurations provided in the rear of stretch limousines also make the test procedure inappropriate. NHTSA has therefore decided not to apply the rear seating requirements to passenger cars with a wheelbase greater than 130 inches. The agency notes that the wheelbases of the longest current production (i.e., unaltered) passenger cars are several inches shorter than 130 inches.

The agency estimates that there are about 40 alterers that modify production vehicles into stretch limousines. These alterers are generally small businesses.

Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. This should not create a significant burden on limousine manufacturers. First, the production cars used for limousines will be certified to comply with the new requirements before the alteration. Alterers will generally not remove padding from the front doors that might be provided in light of the requirements. Since stretch limousines generally have wheelbases longer than 130 inches, the rear seat requirements would not apply. Thus, alterers would not need to add any countermeasures to limousines to ensure that the vehicles would pass the new requirements. However, they would have to make certain, through conducting or sponsoring engineering analysis and/or testing as needed, that their alterations do not weaken the front seat side impact protection provided by the original manufacturer.

Limousine manufacturers should already have considerable experience in certifying that their altered vehicles continue to comply with standards that specify crash test requirements, since several existing standards that include crash test requirements for passenger cars do not exclude limousines. These standards include Standard No. 203, *Head Impact Protection for the Driver from the Steering Control System;* Standard No. 204, *Steering Control Rearward Displacement;* Standard No. 208, *Occupant Crash Protection;* Standard No. 202, *Windshield Mounting;* Standard No. 219, *Windshield Zone Intrusion;* and Standard No 301, *Fuel System Integrity.* NHTSA does not believe that it should be more burdensome for alterers to certify that their altered vehicles continue to meet the new side impact requirements than it is for them to certify that the vehicles continue to meet other standards which specify crash tests. This is particularly true with respect to Standard No. 301, which requires that vehicles pass a lateral moving barrier crash test.

XVIII. Regulatory Impacts

A. Executive Order 12291

NHTSA has examined the impact of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Final Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. The analysis is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The primary cost effect of this rule is on passenger car manufacturers. Few, if any, passenger car manufacturers would qualify as small entities.

NHTSA estimates that there are about 40 alterers that modify production passenger cars into stretch limousines. These alterers are generally small businesses. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. As discussed above, this rule should not create a significant burden on limousine manufacturers. Alterers would not need to add any countermeasures to limousines to ensure that the vehicles would pass the new requirements. However, they would have to make certain, by conducting or sponsoring engineering analysis and/or testing as needed, that their alterations do not weaken the front seat side impact protection provided by the original manufacturer. The agency does not believe that it should be more burdensome for alterers to certify that their altered vehicles meet the new side impact requirements than it is for them to certify that the vehicles meet other applicable standards which specify crash tests.

Other manufacturers which would qualify as small entities, small organizations and governmental units would be affected by this rule to the extent that they purchase passenger cars. They will not be significantly affected, since the potential increases associated with this action should only slightly affect the purchase price of new motor vehicles.

C. Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The addition of padding and structure will result in increased material usage by manufacturers, primarily plastic and metal. There could also be increased material usage associated with possible secondary weight. The agency estimates that cars could increase in average curb weight by 0.8 percent to 1.4 percent, depending on whether secondary weight is included. Such added weight would result in a very slight increase in fuel consumption. After considering these impacts, the agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the requirements do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.214 is amended by revising S1, S2, and S3 and adding S5 through S8.4.2 to read as follows:

§ 571.214 [Amended]

S1. Scope and purpose.

(a) *Scope.* This standard specifies performance requirements for protection of occupants in side impact crashes.

(b) *Purpose.* The purpose of this standard is to reduce the risk of serious and fatal injury to occupants of passenger cars in side impact crashes by specifying vehicle crashworthiness requirements in terms of accelerations measured on anthropomorphic dummies in test crashes, by specifying strength requirements for side doors, and by other means.

S2. *Application.* This standard applies to passenger cars.

S3. *Requirements.*

(a) Each vehicle shall be able to meet the requirements of either, at the manufacturer's option, S3. 1 or S3.2 when any of its side doors that can be used for occupant egress are tested according to S4.

(b) When tested under the conditions of S6, each passenger-car manufactured on or after September 1, 1996 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(c) Except as provided in paragraph (d) of this section, from September 1, 1993 to August 31, 1996, a specified percentage of each manufacturer's yearly passenger car production, as set forth in S8, shall, when tested under the conditions of S6, meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

(d) A manufacturer may, at its option, comply with the requirements of this paragraph instead of paragraph (c) of this section. When tested under the conditions of S6, each passenger car manufactured from September 1, 1994 to August 31, 1996 shall meet the requirements of S5. 1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the car is struck on either side by a moving deformable barrier. Part 572, subpart F test dummies are placed in the front and rear outboard seating positions on the struck side of the car. However, the rear seat requirements do not apply to passenger cars with a wheelbase greater than 130 inches, or to passenger cars which have rear seating areas that are so small that the part 572, subpart F dummies cannot be accommodated according to the positioning procedure specified in S7.

* * * * *

S5. *Dynamic performance requirements.*

S5.1 *Thorax.* The Thoracic Trauma Index (TTI(d)) shall not exceed 85 g for passenger cars with four side doors, and shall not exceed 90 g for passenger cars with two side doors, when calculated in accordance with the following formula:

$$TTI(d) = \tfrac{1}{2}(G_R + G_{LS})$$

The term "G_R" is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term "G_{LS}" is the lower spine (T12) peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S6.13.5.

S5.2 *Pelvis.* The peak lateral acceleration of the pelvis, as measured in accordance with S6.13.5, shall not exceed 130 g's.

S5.3 *Door opening.*

S5.3.1 Any side door, which is struck by the moving deformable barrier, shall not separate totally from the car.

S5.3.2 Any door (including a rear hatchback or tailgate), which is not struck by the moving deformable barrier, shall meet the following requirements:

S5.3.2.1 The door shall not disengage from the latched position;

S5.3.2.2 The latch shall not separate from the striker, and the hinge components shall not separate from each other or from their attachment to the vehicle.

S5.3.2.3 Neither the latch nor the hinge systems of the door shall pull out of their anchorages.

S6. *Test conditions.*

S6.1 *Test weight.* Each passenger car is loaded to its unloaded vehicle weight, plus its rated cargo and luggage capacity, secured in the luggage area, plus the weight of the necessary anthropomorphic test dummies. Any added test equipment is located away from impact areas in secure places in the vehicle. The car's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

S6.2 *Vehicle test attitude.* Determine the distance between a level surface and a standard reference point on the test vehicle's body, directly above each wheel opening, when the vehicle is in its "as delivered" condition. The "as delivered" condition is the vehicle as received at the test site, filled to 100 percent of all fluid capacities and with all tires inflated to the manufacturer's specifications listed on the vehicle's tire placard. Determine the distance between the same level surface and the same standard reference points in the vehicle's "fully loaded condition." The "fully loaded condition" is the test vehicle loaded in accordance with S6.1. The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The pretest vehicle attitude is equal to either the as delivered or fully loaded attitude or between the as delivered attitude and the fully loaded attitude.

S6.3 *Adjustable seats.* Adjustable seats are placed in the adjustment position midway between the forward most and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

S6.4 *Adjustable seat back placement.* Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. If the position is not specified, set the seat back at the first detent rearward of 25° from the vertical. Place each adjustable head restraint in its highest adjustment position. Position adjustable lumbar supports so that they are set in their released, i.e., full back position.

S6.5 *Adjustable steering wheels.* Adjustable steering controls are adjusted so that the steering wheel hub

is at the geometric center of the locus it describes when it is moved through its full range of driving positions.

S6.6 *Windows.* Movable vehicle windows and vents are placed in the fully closed position on the struck side of the vehicle.

S6.7 *Convertible tops.* Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S6.8 *Doors.* Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S6.9 *Transmission and brake engagement.* For a vehicle equipped with a manual transmission, the transmission is placed in second gear. For a vehicle equipped with an automatic transmission, the transmission is placed in neutral. For all vehicles, the parking brake is engaged.

S6.10 *Moving deformable barrier.* The moving deformable barrier conforms to the dimensions shown in Figure 1 and specified in part 587.

S6.11 *Impact reference line.* For vehicles with a wheelbase of 114 inches or less, on the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line which is 37 inches forward of the center of the vehicle's wheelbase. For vehicles with a wheelbase greater than 114 inches, on the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line which is 20 inches rearward of the centerline of the vehicle's front axle.

S6.12 *Impact configuration.* The test vehicle (vehicle A in Figure 2) is stationary. The line of forward motion of the moving deformable barrier (vehicle B in Figure 2) forms an angle of 63 degrees with the centerline of the test vehicle. The longitudinal centerline of the moving deformable barrier is perpendicular to the longitudinal centerline of the test vehicle when the barrier strikes the test vehicle. In a test in which the test vehicle is to be struck on its left (right) side: All wheels of the moving deformable barrier are positioned at an angle of 27±1 degrees to the right (left) of the centerline of the moving deformable barrier; and the left (right) forward edge of the moving deformable barrier is aligned so that a longitudinal plane tangent to that side passes through the impact reference line within a tolerance of±2 inches when the barrier strikes the test vehicle.

S6.13 *Anthropomorphic test dummies.*

S6.13.1 The anthropomorphic test dummies used for evaluation of a vehicle's side impact protection conform to the requirements of subpart F of part 572 of this chapter. In a test in which the test vehicle is to be struck on its left side, each dummy is to be configured and instrumented to be struck on its left side, in accordance with subpart F of part 572. In a test in which the test vehicle is to be struck on its right side, each dummy is to be configured and instrumented to be struck on its right side, in accordance with subpart F of part 572.

S6.13.2 Each part 572, subpart F test dummy specified is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants. Each foot of the test dummy is equipped with a size 11EE shoe which meets the configuration size, sole, and heel thickness specifications of MIL-S-13192 (1976) (incorporated by reference; see section 571.5) and weighs 1.25±0.2 pounds.

S6.13.3 Limb joints are set at between 1 and 2 g's. Leg joints are adjusted with the torso in the supine position.

S6.13.4 The stabilized temperature of the test dummy at the time of the side impact test shall be at any temperature between 66 degrees F. and 78 degrees F.

S6.13.5 The acceleration data from the accelerometers mounted on the ribs, spine and pelvis of the test dummy are processed with the FIR100 software specified in 49 CFR 572.44(d). The data are processed in the following manner:

S6.13.5.1 Filter the data with a 300 Hz, SAE Class 180 filter;

S6.13.5.2 Subsample the data to a 1600 Hz sampling rate;

S6.13.5.3 Remove the bias from the subsampled data, and

S6.13.5.4 Filter the data with the FIR100 software specified in 49 CFR 572.44(d), which has the following characteristics—

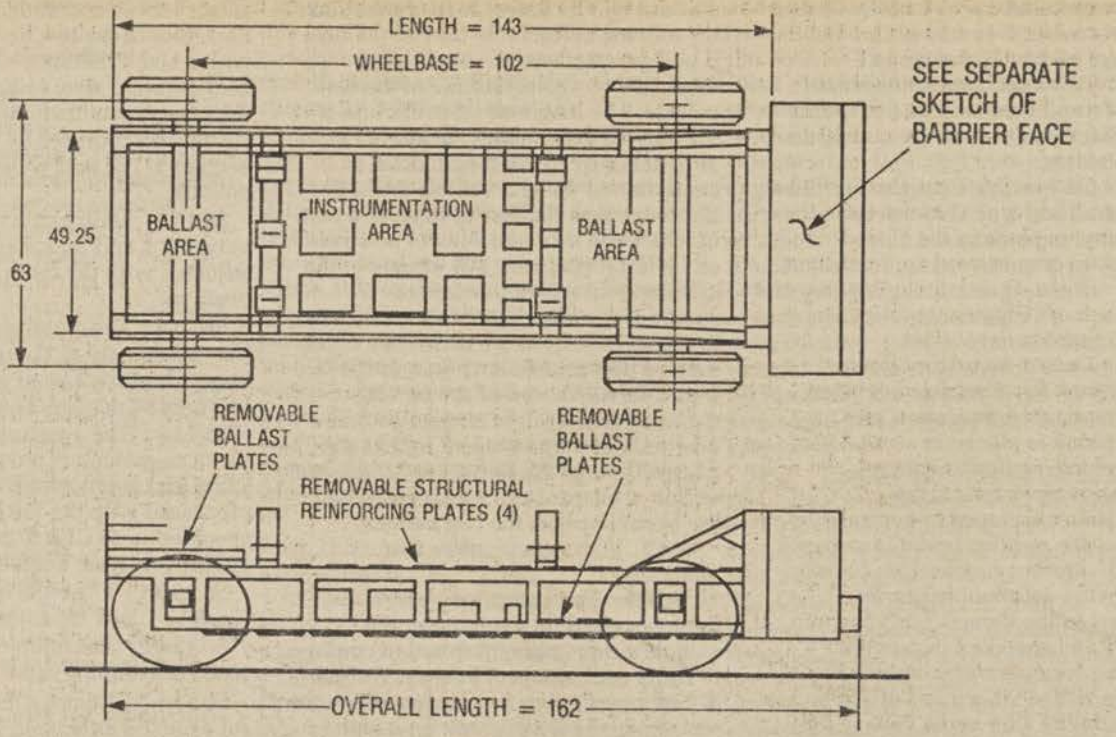
S6.13.5.4.1 Passband frequency 100 Hz.

S6.13.5.4.2 Stopband frequency 189 Hz.

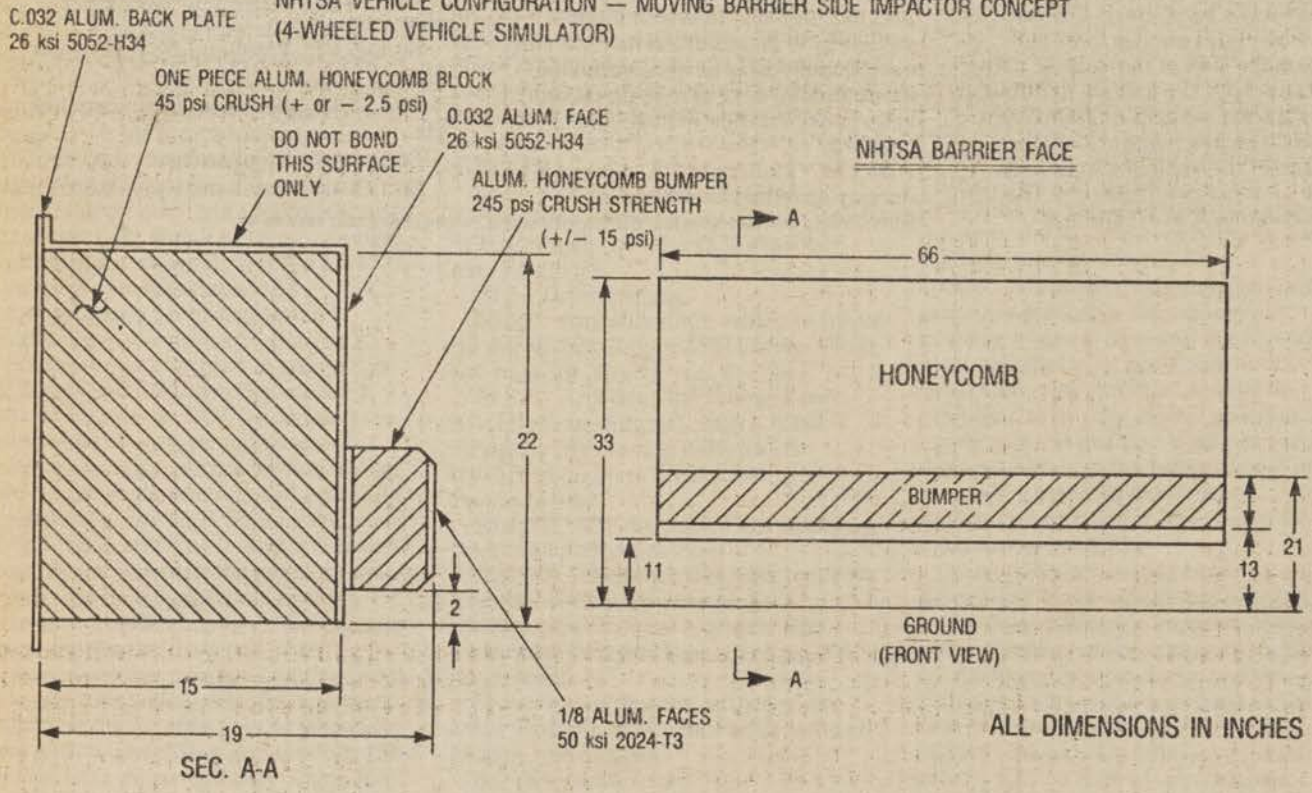
S6.13.5.4.3 Stopband gain −50 db.

S6.13.5.4.4 Passband ripple 0.0225 db.

BILLING CODE 4910-59-M

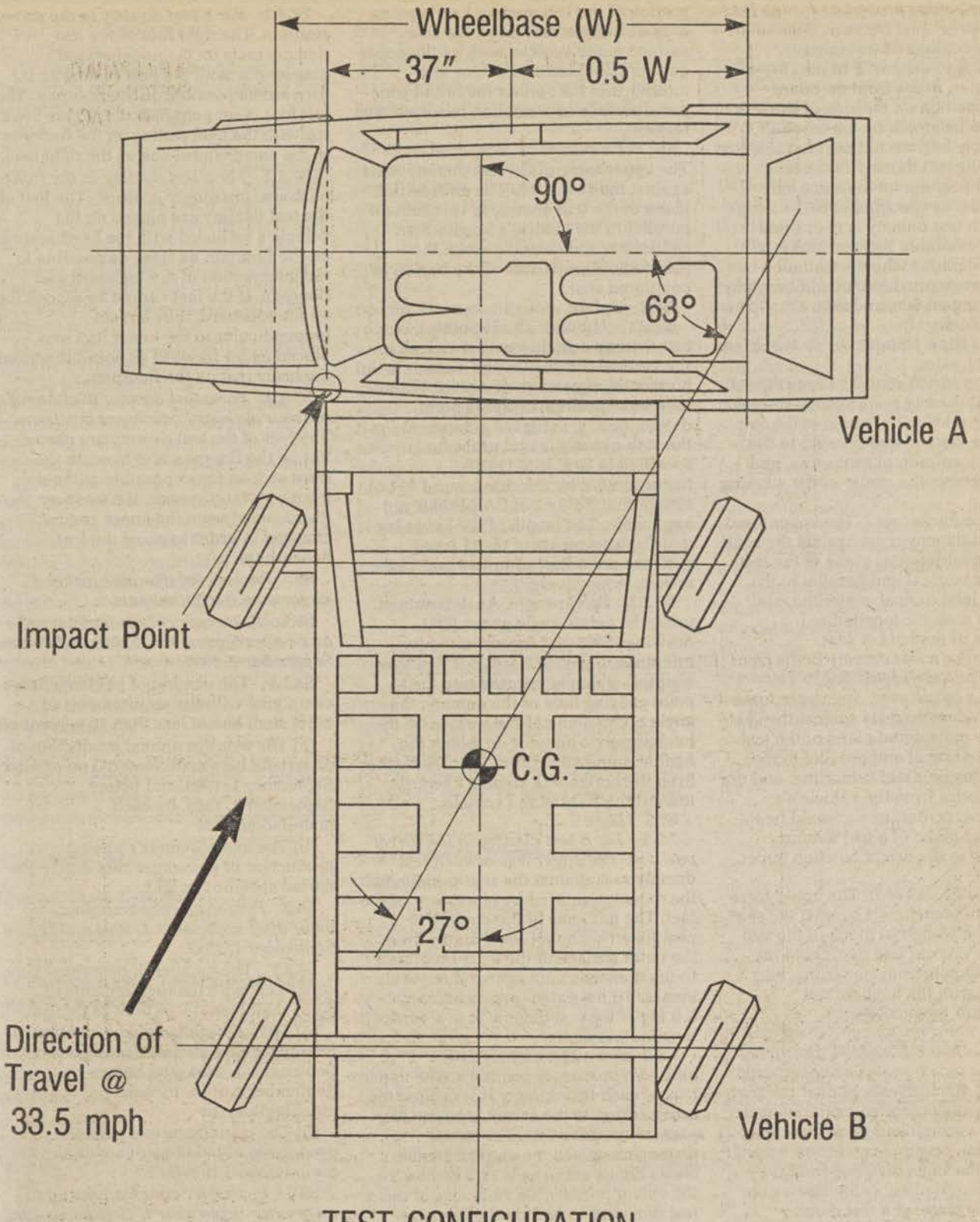


NHTSA VEHICLE CONFIGURATION — MOVING BARRIER SIDE IMPACTOR CONCEPT
(4-WHEELED VEHICLE SIMULATOR)



NHTSA side impactor — moving deformable barrier

FIGURE 1



TEST CONFIGURATION

Figure 2

S7. *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a correctly configured test dummy, conforming to subpart F of part 572 of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and position another conforming test dummy in the rear outboard position on the same side of the vehicle, as specified in S7.1 through S7.4. Each test dummy is restrained using all available belt systems in all seating positions where such belt restraints are provided. In addition, any folding armrest is retracted.

S7.1 *Torso.*

S7.1.1 *For a test dummy in the driver position.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and passes through the center of the steering wheel.

(b) *For a bucket seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket seat.

S7.1.2 *For a test dummy in the front outboard passenger position.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and the same distance from the vehicle's longitudinal centerline as would be the midsagittal plane of a test dummy positioned in the driver position under S7.1.1.

(b) *For a bucket seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket seat.

S7.1.3 *For a test dummy in either of the rear outboard passenger positions.*

(a) *For a bench seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and, if possible, the same distance from the vehicle's longitudinal centerline as the midsagittal plane of a test dummy positioned in the driver position under S6.1.1. If it is not possible to position the test dummy so that its midsagittal plane is parallel to the vehicle longitudinal centerline and is at this distance from the vehicle's longitudinal centerline, the test dummy is positioned so that some portion of the test dummy just touches, at or above the seat level, the side surface of the vehicle, such as the upper quarter panel, an armrest, or any interior trim (i.e., either the broad trim panel surface or a smaller, localized trim feature).

(b) *For a bucket or contoured seat.* The upper torso of the test dummy rests against the seat back. The midsagittal plane of the test dummy is vertical and parallel to the vehicle's longitudinal centerline, and coincides with the longitudinal centerline of the bucket or contoured seat.

S7.2 *Pelvis.*

S7.2.1 *H-point.* The H-points of each test dummy coincide within ½ inch in the vertical dimension and ½ inch in the horizontal dimension of a point ¼ inch below the position of the H-point determined by using the equipment for the 50th percentile and procedures specified in SAE J826 (1980) (incorporated by reference; see § 571.5), except that Table 1 of SAE J826 is not applicable. The length of the lower leg and thigh segments of the H-point machine are adjusted to 16.3 and 15.8 inches, respectively.

S7.2.2 *Pelvic angle.* As determined using the pelvic angle gauge (GM drawing 78051–532 incorporated by reference in part 572, subpart E of this chapter) which is inserted into the H-point gauging hole of the dummy, the angle of the plane of the surface on the lumbar-pelvic adaptor on which the lumbar spine attaches is 23 to 25 degrees from the horizontal, sloping upward toward the front of the vehicle.

S7.3 *Legs.*

7.3.1 *For a test dummy in the driver position.* The upper legs of each test dummy rest against the seat cushion to the extent permitted by placement of the feet. The left knee of the dummy is positioned such that the distance from the outer surface of the knee pivot bolt to the dummy's midsagittal plane is six inches. To the extent practicable, the left leg of the test dummy is in a vertical longitudinal plane.

7.3.2 *For a test dummy in the outboard passenger positions.* The upper legs of each test dummy rest against the seat cushion to the extent permitted by placement of the feet. The initial distance between the outboard knee clevis flange surfaces is 11.5 inches. To the extent practicable, both legs of the test dummies in outboard passenger positions are in vertical longitudinal planes. Final adjustment to accommodate placement of feet in accordance with S7.4 for various passenger compartment configurations is permitted.

S7.4 *Feet.*

S7.4.1 *For a test dummy in the driver position.* The right foot of the test dummy rests on the undepressed accelerator with the heel resting as far forward as possible on the floorpan. The left foot is set perpendicular to the lower leg with the heel resting on the floorpan in the same lateral line as the right heel.

S7.4.2 *For a test dummy in the front outboard passenger position.* The feet of the test dummy are placed on the vehicle's toeboard with the heels resting on the floorpan as close as possible to the intersection of the toeboard and floorpan. If the feet cannot be placed flat on the toeboard, they are set perpendicular to the lower legs and placed as far forward as possible so that the heels rest on the floorpan.

S7.4.3 *For a test dummy in either of the rear outboard passenger positions.* The feet of the test dummy are placed flat on the floorpan and beneath the front seat as far as possible without front seat interference. If necessary, the distance between the knees can be changed in order to place the feet beneath the seat.

S8. *Phase-in of dynamic test and performance requirements.*

S8.1 *Passenger cars manufactured on or after September 1, 1993 and before September 1, 1994.*

S8.1.1 The number of passenger cars complying with the requirements of S3(c) shall be not less than 10 percent of:

(a) The average annual production of passenger cars manufactured on or after September 1, 1990, and before September 1, 1993, by each manufacturer, or

(b) The manufacturer's annual production of passenger cars during the period specified in S8.1.

S8.2 *Passenger cars manufactured on or after September 1, 1994 and before September 1, 1995.*

S8.2.1 The number of passenger cars complying with the requirements of S3(c) shall be not less than 25 percent of:

(a) The average annual production of passenger cars manufactured on or after September 1, 1991, and before September 1, 1994, by each manufacturer, or

(b) The manufacturer's annual production of passenger cars during the period specified in S8.2.

S8.3 *Passenger cars manufactured on or after September 1, 1995 and before September 1, 1996.*

S8. 3.1 The number of passenger cars complying with the requirements of S3(c) shall be not less than 40 percent of:

(a) The average annual production of passenger cars manufactured on or after September 1, 1992, and before

September 1, 1995, by each manufacturer, or

(b) The manufacturer's annual production of passenger cars during the period specified in S8.3.

S8.4 *Passenger cars produced by more than one manufacturer.*

S8.4.1 For the purposes of calculating average annual production of passenger cars for each manufacturer and the number of passenger cars manufactured by each manufacturer under S8.1, S8.2, and S8.3, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S8.4.2:

(a) A passenger car which is imported shall be attributed to the importer.

(b) A passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S8.4.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 586, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S8.4.1.

Issued on October 24, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-25391 Filed 10-24-90; 11:15 am]

BILLING CODE 4910-59-M

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49 CFR Part 572

[Docket No 88-07, Notice 3]

RIN 2127-AA48

Anthropomorphic Test Dummy; Side Impact Protection.

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice establishes specifications for the side impact dummy that is to be used in the full-scale dynamic crash test specified under amendments to Standard No. 214, *Side Door Strength*, which appear elsewhere in today's **Federal Register**. The specifications for the side impact dummy are set forth in a new subpart F of part 572, *Anthropomorphic Test Dummies*. The agency is specifying the side impact dummy (SID) that it proposed in January 1988. The agency notes that two alternative dummies, BioSID and EuroSID, are under development. The agency believes that these dummies may become available as regulatory test devices in the future. These dummies can measure the same injury criteria as SID, but also offer the advantage of measuring additional injury criteria. If ongoing studies demonstrate that one or both of these dummies compare satisfactorily to the SID, the agency will consider proposing such dummies as alternative devices in the future.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective November 29, 1990. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 29, 1990. The new Standard No. 214 requirements which specify use of the side test dummy are phased in over a three-year period, beginning on September 1, 1993. Petitions for reconsideration of this final rule must be filed by November 29, 1990.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-0842).

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2239) a notice of proposed rulemaking (NPRM) to add procedures and performance requirements for a new dynamic test to Standard No. 214, *Side Door Strength*. In the proposed additional test, a passenger car must provide protection in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle.

The proposed test procedure included placing anthropomorphic test dummies in the outboard front and rear seats of the target car to measure the potential for injuries to an occupant's thorax and pelvis. For the thorax, the proposed performance limit used an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion is based on a combination of peak acceleration values measured in g's on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. NHTSA requested comments on the appropriateness of a TTI(d) limit ranging from 80 to 115 g's. In addition, the notice requested comments on the appropriateness of limits, ranging from 130 to 190 g's, on the peak acceleration that the pelvis should experience during the impact.

In conjunction with the NPRM to amend Standard No. 214, NHTSA published a separate notice proposing specifications for the side impact test dummy (SID) to be used in the full-scale crash test. 53 FR 2254, January 27, 1988.

Elsewhere in today's **Federal Register**, NHTSA publishes a final rule adopting the dynamic test amendments to Standard No. 214.

This notice establishes specifications for SID. As described in detail later in this notice, the agency conducted a substantial number of tests to develop a test dummy that would be appropriate for use in the upgraded side impact standard. The SID adopted in this notice is based on the part 572, subpart B anthropomorphic test device that is used in existing occupant protection safety standards.

Summary of the Final Rule

The specifications for SID consist of a drawing package containing all of the technical details of the dummy parts and dummy assembly, and a set of master patterns for all molded and cast parts of the dummy. Those patterns make possible the rapid reproduction of those parts. In addition, there is a SID user's manual containing disassembly, inspection, and assembly procedures; external dimensions and weight; and a dummy drawing list. These drawings and specifications ensure that the dummies would vary little from each other in their construction. Performance criteria serve as calibration checks and further assure the uniformity of dummy assembly, construction, and instrumentation.

The dummy is instrumented with accelerometers for measurement of accelerations in the chest and pelvis during impacts. The rule specifies the manner and location of installation of the instrumentation to reduce variability in their measurements resulting from differences in location and mounting.

Drawings and specifications for the side impact test dummy are available for examination in the NHTSA Docket Section. Copies of those materials and the SID user's manual can be obtained from the Rowley-Scher Reprographics, Inc., 1111 14th Street NW., Washington,

DC 20005, telephone (202) 628–6667 or 408–8789. In addition, patterns for all cast and molded parts are available on a loan basis from the NHTSA Office of Vehicle Safety Standards.

Description

The SID is identical to the existing part 572, subpart B test dummy used in Standard No. 208, with several exceptions. The thorax and pelvis have been redesigned to produce human-like acceleration responses in the lateral direction. Also, the dummy has provision to mount accelerometers for ribs, spine and pelvis; a shock absorber between the ribcage and the spine; and a hinge where the ribs attach to the spine. Further, to keep the design of the SID as simple as possible, the test device does not have articulating arms or shoulders. Instead, the mass of the arms has been incorporated into the mass of the thorax, and urethane foam 'stump' arms have been added for the appropriate biofidelity characteristics. The agency determined early in the development and testing of the SID that the presence of separate physical arms and shoulder structure introduces considerable response variability into the test results. In addition, the use of an articulating arm and shoulder sub-assembly might introduce unnecessary mechanical complications in the construction and assembly of the test dummy.

Biofidelity

In developing SID, NHTSA sought to develop a test dummy that would be an appropriate human surrogate for measuring injury risk in a side impact. The agency considered whether the human injury risk of the particular impact situation could be determined from measurement of responses obtained from SID, and whether those specific responses possess biofidelity of response with human beings. The term "biofidelity" refers to how well a test dummy duplicates the responses of a human being in an impact.

Based on cadaver tests, the agency developed two empirical criteria for measuring injury risk in side impacts: TTI(d) and pelvic acceleration. The bases for these injury criteria are fully discussed in the separate notice adding the dynamic test requirements to Standard No. 214. The agency believes that TTI(d), which is calculated using peak rib and spinal accelerations measured in g's, predicts the probability of differing levels of thoracic injury that a person would experience in a real-world crash. The agency similarly believes that pelvic acceleration predicts the probability of pelvic fracture that a person would experience in a real-world crash. The TTI(d) and pelvic g's injury criteria are based on a large data base containing information on 84 individual cadaver impacts. It should be noted that the two injury criteria do not address all types of injuries in a side impact. For example, they do not address head injuries or some types of abdominal injuries.

In order for SID, or any other test dummy, to be considered an appropriate human surrogate for measuring TTI(d) and pelvic acceleration in the side impact test procedure, the TTI(d) and pelvic acceleration measurements obtained from the dummy must be correlated to those which would be obtained if a human being were subjected to the same impact conditions.

During the development of the SID, NHTSA examined the biofidelity of the SID's thorax (rib/spine) and pelvic acceleration responses in simulated vehicle crash tests.

One primary set of data used by NHTSA in evaluating the biofidelity of the SID was from a series of tests sponsored by the Forschungsvereinigung Automobiltechnik (FAT), an association of German vehicle manufacturers (SAE paper 861877). In those tests, a moving barrier was attached to a sled buck and accelerated down a track so that it impacted the side of a subcompact automobile. A total of 35 three-point belt restrained cadavers and 5 SID test devices were used in this test series. The vehicles containing the cadaver test subjects were struck at speeds ranging from 40–60 kmh (25–37 mph), while the vehicles containing the SID were struck at 50 kmh (31 mph).

In analyzing the results of those tests, the agency compared the cumulative variance of the test dummy responses to the cumulative variance of the cadaver responses. The results, which were discussed in more detail on pages IIIB–8–9 of the Preliminary Regulatory Impact Analysis, indicated that the responses of the upper and lower ribs, the lower spine and the pelvis of the SID correspond well with the responses of the cadavers in similar impacts.

The agency also compared average peak acceleration values of cadavers and the SID in sled tests in which the occupant impacted a padded or rigid wall. These results showed that, for the rigid wall impact condition, the SID thorax and pelvis responses were greater than those of cadavers. This reflects the fact that the SID structure is made of steel and is, naturally, less compliant than the human skeletal structure. However, for the padded wall impact condition, which is more similar to the interior of a car, the SID responses were similar to the cadaver responses.

During the year before the NPRM was issued, NHTSA made a slight revision in the SID thorax design to accommodate a new rib damping material produced by United-McGill. The agency had learned that the damping material used in earlier versions of the SID was being phased out of production. While the proposed SID reflected the new damping material, the tests discussed above used SID dummies with the earlier damping material.

In an addendum to the PRIA, the agency reassessed biofidelity in light of the new damping material. Based on a comparison of peak acceleration values of the thorax in cadavers and the modified SID in 17 mph rigid wall sled tests and 23 mph padded wall sled tests, the agency concluded that the biofidelity of the proposed SID appeared to be better than the earlier SID design as the peak g's were closer to the baseline side impact cadaver data. As discussed in the PRIA, a comparison of the cumulative variance of the test dummy responses to the cumulative variance of the cadaver responses indicated that biofidelity was well within the range of acceptability.

The agency noted in the NPRM that although testing indicates that the SID experiences higher accelerations than a cadaver in a rigid wall impact, such a test environment is not typical of the occupant-to-door interior impacts experienced in side crashes. In tests with a padded structure, which will be more typical of the interior of a door, the SID responses are close to those of cadavers. This is true for both the earlier version of SID and the proposed SID.

In the process of developing the side impact test procedure, NHTSA also compared the force-time loading characteristics of the SID to cadavers in rigid and padded wall impact tests. The purpose of this comparison was to see whether the SID experiences a dynamic impact event in a way which is similar to the one in which a human being experiences such an event. In the NPRM, the agency stated that for rigid wall impacts at 23 mph, the SID thorax and pelvis responded with higher force levels compared to cadavers, but that for padded wall impact conditions, the responses were very similar. NHTSA recognizes, however, that even for the padded wall impacts, the SID experienced a somewhat higher peak force level than cadavers.

As discussed in the FRIA, the United-McGill damping material modifications made prior to issuance of the NPRM

increased the force-time response and the impulse response.

NHTSA believes that examination of the impulse responses, which are shown in the FRIA, indicate that SID experiences the same basic dynamic event as a cadaver. For padded wall impacts, which are more similar to the conditions SID will experience in cars, the shape of the curves are generally similar. The duration of the event is similar for SID and cadavers, and the peak force occurs at essentially the same time. The agency's comparison of the acceleration responses of SID and cadavers indicates that the higher peak force experienced by SID does not translate into different acceleration responses. To the extent that the higher peak force is associated with a higher effective chest mass for SID than cadavers, the agency has, as discussed further below, studied the influence of the higher SID chest mass in selecting optimum countermeasures and determined that there is no significant effect.

Numerous commenters argued that SID lacks biofidelity in a number of areas. GM argued that SID is not a credible tool for predicting human response in a side impact because it lacks the following five essential human characteristics: proper chest deflection, proper chest mass, field relevant arm position, credible shoulder load path, and abdominal biofidelity and injury assessment capability.

GM stated that NHTSA's development of SID and a lateral thoracic injury criterion was based on the assumption that the acceleration and force responses of cadavers are sufficient to describe the risk of human thoracic injury in side impacts. That company argued that this is inaccurate, and that deflection is critical to assessing chest injury risk. GM stated that because SID was not designed with correct force versus deflection properties, it is fundamentally invalid as a human simulator.

According to GM, SID cannot reproduce human rib and spine accelerations for the relevant range of real world impact conditions. That commenter argued that the accelerations of the ribs and spine are necessarily dependent upon the compliance of the dummy components which interconnect them. GM argued that without human compliance properties, the acceleration responses cannot be human-like.

GM also argued that the SID thoracic rib mass is not representative of humans. That company stated that the rib mass of SID is about 10 times greater than the rib mass of Hybrid III. According to GM, the thorax of the SID experiences forces during impact that are due primarily to the inertial effects of its overly massive ribs. GM stated that the agency has indicated that the mass of the SID was selected to match the desired TTI values derived for specific test conditions. That company argued that SID may produce accelerations comparable to the human for one single test condition, but its incorrect inertial properties will cause erroneous responses if the test conditions vary.

Ford commented that there are two major issues regarding SID—its structure, i.e., its stiffness and weight, and its performance, i.e., how human-like is its response. That company argued that the SID thorax is too heavy, too stiff, and does not provide a response which is adequately human-like. Ford argued that the excessive stiffness and greater mass, coupled with the acceleration-based injury criterion TTI(d), have the potential to lead to vehicle design countermeasures (primarily interior door padding) that are too stiff and could actually degrade occupant safety, especially that of the elderly.

Chrysler stated that test dummy biofidelity and Thorasic Trauma Index (TTI) have been the center of controversy since NHTSA's public meeting on side impact protection held in May 1986. (Here, TTI refers to the cadaver responses. It is different from TTI(d), which is the acceleration measurement on the dummy). That company expressed concern that use of an inappropriate test dummy and injury criterion may result in vehicle designs which meet the requirements, but produce little real world benefits.

BMW argued that SID has inadequate biofidelity, which can lead to erroneous development of injury-reducing measures. According to that commenter, SID reacts more strongly to padding/damping material than do cadavers or real occupants. BMW stated that the rib mass of SID is too high. It argued that the mass of the "missing" arms should not be added to that of the ribs, because this does not represent a real occupant. BMW stated that neither from a biomechanical standpoint, nor from the consideration of a normal seating position, does this appear to be permissible. According to that company, the resulting excessive rib mass results in different inertia forces and effects than would be seen with humans. BMW argued that the inertia forces directly influence the required stiffness of damping materials and, in addition, the dummy kinematics will be influenced by the mass distribution, with additional potential to erroneously influence the development of protective measures.

BMW also expressed concern that force/deflection characteristics were not used in the development of the SID thorax. That company stated that these characteristics have great influence in side impacts, since here a direct interaction of the penetrating structure of the vehicle and the thorax area of the occupant occurs and is responsible for injuries. BMW also argued that peak rib and spine accelerations occur at different times during cadaver testing, but at the same time when SID is tested, which it considers to be another example of the inadequate biofidelity of SID.

A number of commenters cited the results of tests conducted according to procedures developed by the ISO to evaluate the biofidelity of side impact dummies, in support of the argument that SID lacks biofidelity. CCMC stated, based on its testing, that SID does not meet the requirements for 23 responses out of 36. This means that these SID responses differed from the required response by more than 20 percent. Of the remaining 13 responses, seven were exactly in the range prescribed by ISO, and the other six differed from the required ones by less than 20 percent. JAMA stated, based on its testing, that SID failed to meet all of the ISO requirements.

After considering the comments, NHTSA continues to believe that SID has adequate biofidelity. As indicated above, the agency believes that the relevant inquiry is whether SID can provide human-like measurements of the injury criteria specified in the side impact final rule, TTI(d) and pelvic acceleration, under conditions that are representative of real world side impact crashes.

Many commenter criticisms concerning SID biofidelity, including arguments that SID does not meet the ISO corridors for biofidelity, are irrelevant to SID's ability to provide human-like measurements of TTI(d) and pelvic acceleration. The ISO has adopted a very different approach than the agency in evaluating biofidelity. Based on a combination of pendulum, body-drop, and sled tests, it has defined biomechanical response corridors for the thorax, spine, pelvis, head, neck, chest displacement, shoulder and abdomen. In designing SID, NHTSA only sought to ensure biofidelity with respect to TTI(d) and pelvic acceleration. While the agency recognizes that biofidelity in other areas might increase dummy usefulness for purposes of research, it is unnecessary

for purposes of a regulatory test device which is intended to measure potential for injury in specific body parts of an occupant under specified impact conditions.

With respect to BMW's assertion that peak rib and spine accelerations occur at different times during cadaver testing than when SID is tested, NHTSA's examination of test data indicates that, for a majority of test conditions, the peak rib and spine accelerations in the SID occurred at about the same time as for cadavers. However, precise agreement of the time of peak acceleration is not important. As long as peak acceleration values are similar, TTI(d) will be similar.

With respect to commenter concerns that the SID thorax is stiffer than that of humans, NHTSA notes that since SID was designed to measure acceleration-based injury criteria in vehicle environments, it was unnecessary for the agency to design SID with biomechanically correct thorax deflection or stiffness based on local area responses such as in pendulum tests.

The agency disagrees with the contention of several commenters that SID is an invalid human surrogate because it was not designed with correct force versus deflection characteristics. First, as discussed at length in the main side impact notice, NHTSA believes that TTI(d), calculated using peak rib and spinal accelerations, adequately predicts the risk of thoracic injury. Thus, while the agency does not disagree that deflection might be relevant to chest injury risk under certain impact conditions, it does not accept the argument that deflection is critical. Second, NHTSA disagrees with the argument that because the SID thorax is stiffer than that of humans, the SID acceleration responses cannot be human-like. The agency believes that its biofidelity testing, discussed above, demonstrates that SID acceleration responses are close to those of humans, especially in test conditions which are representative of car interiors.

As discussed in the FRIA, analysis using the Department of Transportation side impact sensitivity model indicates that selection of optimum padding is not sensitive to variations in SID stiffness, and that paddings that optimize the SID response will also provide near optimum benefits for human occupants.

With respect to comments concerning the mass of the SID chest, NHTSA notes that, statically, the mass of 65.8 pounds is not significantly different from that of humans. The agency has found that the apparent effective thorax mass (dynamically) is about 18 percent higher than that of a 50th percentile male. As discussed in the FRIA, analysis using modelling indicates that SID's higher apparent effective thorax mass will not affect the selection of optimum padding.

The conclusions that the mass and stiffness of the SID chest will not significantly affect padding selection are supported by recent research comparing SID with two alternative side impact test dummies, EuroSID and BioSID. As part of this research, the agency conducted a series of tests to examine the effect of padding stiffness upon the injury hazard measurements of these dummies when subjected to a given test condition. All three dummies are known to have different thorax mass and thorax stiffness characteristics. Each of the dummies was exposed to a series of 20 mph lateral impacts into a rigid wall which was padded with three inch thick foam padding of various stiffness. The padding stiffness varied from a very low value representative of a soft foam to nearly as stiff as the rigid wall. All three devices selected essentially the same optimum material, and all three dummies ranked the materials almost identically from softest to hardest. Thus, differences in chest mass and stiffness between the different dummies did not have any significant effect on padding selection.

The agency also notes that in recent tests conducted by MVMA, using Pontiac 6000's with and without padding, the SID and BioSID indicated similar padding effectiveness, i.e., percent reduction in TTI(d). This was in spite of the differences in chest mass and stiffness between the two dummies.

Since differences in thorax mass and stiffness of SID as compared to humans do not affect padding selection, the agency rejects the argument that the use of SID could lead to padding that is so stiff that it would increase injuries to the elderly or any other group of persons. NHTSA also notes that it is obvious that any padding that is added to a car to reduce TTI(d) as measured by SID would clearly be less stiff than the interior car door, and, therefore, make a contribution to improving occupant safety for persons of all ages.

NHTSA is not persuaded by GM's concern that while SID may produce accelerations comparable to those for humans for one single type or level of exposure, its incorrect inertial properties will cause erroneous responses if the test conditions vary. As discussed above, SID does experience higher accelerations than a cadaver in a rigid wall impact. NHTSA believes it is important that SID experience human-like responses in the regulated environment. In car interior tests, and in tests with a padded structure, the SID responses are close to those of cadavers. Thus, in the regulated environment, SID testing will result in human-like responses. The SID/BioSID test results cited above also refute GM's claim, since differences in chest mass and stiffness between the two dummies did not lead to different evaluations of padding effectiveness.

The agency disagrees with GM's arguments that SID lacks credible shoulder load path or field relevant arm position. From early development tests, the agency found that an articulating arm and shoulder sub-assembly introduced test variability and mechanical reliability problems. In order to keep the design of SID as simple as possible, the agency designed it without articulating arms or shoulders. Instead, the mass of the arms and shoulders were built into the mass of the thorax, and urethane "stump" arms were added to attain the proper biofidelity characteristics.

As discussed in the FRIA, although the SID does not have an anatomically replicated shoulder structure and arms that can be articulated, there is strong evidence that the "stump" arm design appropriately incorporates the characteristics of the arm and shoulder into the thoracic structure, thus providing a credible shoulder load path. In NHTSA's rigid and padded wall sled tests, the shoulder area of the SID was a load bearing contact point as was the shoulder of the cadaver. There was a strong agreement between the SID and human specimen thorax responses. Also, pendulum tests conducted at 19 mph show reasonable force-time fidelity for the shoulder area of the SID.

GM's argument concerning arm position was based on a study of films indicating left arm position of drivers as they approached a stop sign at an intersection and as they started to leave the interection. That company stated that while the driver used the arm rest 34.4 percent of the time in the open road, the armrest was used only 10.6 percent of the time at intersections. GM argued that because serious side impact injuries occur most frequently in intersection crashes, design improvements of the side interior should focus on the direct loading of the chest and abdomen. Direct loading of the chest and abdomen occurs when the arms are up. GM argued that SID's incorporation of the shoulder and arm into the chest structure replicates an arms down condition, which it believes is inappropriate based on observations of normal driving behavior.

The films utilized by GM were from an Insurance Institute for Highway Safety (IIHS) study concerning shoulder belt use and were taken at all-way stop sign intersections. As discussed in the FRIA, the agency examined the same films and had difficulty in determining arm position in many cases, as well as determining when a vehicle was entering an intersection. The films take a picture of the license plate and then of the occupants to determine belt position. The films generally do not follow the vehicle into the intersection unless a picture was not taken of the front license plate, which made it necessary to take a picture of the rear license plate. NHTSA found that about 40 percent of the drivers' arms were down, which is not significantly different from the number found by GM for drivers approaching an intersection. However, the agency could not determine the drivers' arm position for vehicles entering the intersection with any certainty, contrary to the GM claim.

Given the difficulties in determining the drivers' arm position when entering the intersection, NHTSA does not accept GM's claim that the films indicate that drivers' arms are down only about 10 percent of the time in intersections. In developing the side impact test procedure, NHTSA sought to specify conditions that are representative of a significant number of crashes. NHTSA believes that an arms-down approach is reasonable. As indicated above, the agency found that about 40 percent of the drivers' arms were down in the films cited by GM. Moreover, as discussed in the FRIA, the agency performed an informal survey at a Washington, DC intersection of 125 right front seat passengers and found that about 77 percent had their arms down. Finally, even if a driver's arms are up on the steering wheel, the thorax may be partially covered by the upper arm, depending on the length of the driver's arm and the position of the seat in relation to the steering wheel. In addition, the GM argument pertains only to drivers and not passengers. About 25 percent of side impact fatalities and injuries occur to passengers.

Volkswagen argued that shortfalls of SID with respect to biofidelity are demonstrated by full scale crash tests conducted by the Motor Vehicle Manufacturers Association (MVMA) with redundant accelerometers. According to that company, the MVMA data show differences as high as 32 percent in maximum acceleration readings from accelerometers placed next to each other. Volkswagen argued that these differences must be addressed and resolved if the proposed standard is to meet the test of objectivity and reproducibility required of a safety standard.

NHTSA examined the MVMA test data to assess Volkswagen's concern. The agency notes that differences as high as 32 percent occur in certain cars well after the primary peak acceleration has been recorded. For the peak acceleration values which are used in calculating TTI(d), differences between primary and redundant acceleration data are within a normal range of variability. Since the primary and redundant accelerometers are located at slightly different spots, some differences should be expected. The agency also notes that redundant accelerometers are not used in calculating TTI(d).

Durability and Reliability

In the NPRM, NHTSA explained that it had gained considerable experience regarding the SID's durability and reliability from 20 full scale production vehicle tests conducted for the agency by the Transportation Research Center (TRC) of Ohio and from 16 modified 1985 Ford LTD tests, also conducted by TRC of Ohio for MVMA (Society of Automotive Engineers (SAE) paper 871115). These full scale vehicle tests were conducted with the SID unrestrained and simulated typical two vehicle perpendicular impacts, using the MDB at a speed of 33.5 mph. In NHTSA's tests, the relative velocity of the SID and the inner door surface at contact ranged up to 25 mph, based on analysis of the door and SID accelerometer responses.

NHTSA stated in the NPRM that these tests, in combination with rigid wall sled tests, cover what is considered to be the range of impact environments to be encountered by the SID when it is used by vehicle manufacturers in upgrading the side impact performance of their automobiles. The agency stated that at one end of the scale, the rigid wall sled tests conducted at 23 mph are considered to be the most severe of impact environments. At the other end of the scale, the modified 1985 Ford LTD tests conducted by MVMA represent what is considered to be the least severe test condition (with respect to the thorax and pelvis).

While NHTSA's test program covering the first 19 production vehicles was underway, NHTSA identified several changes that would increase the durability of the SID. Those changes, which were incorporated into the dummy and discussed in the NPRM, included: (1) Replacing the leather rib hinge of the SID with a rubber impregnated transmission belt to eliminate a fatigue failure problem, (2) adding a universal joint to the end of the thorax shock absorber to prevent shock absorber piston rod bending as the chest rotated about the spine box, and (3) building plastic hinges into the femurs to stop the breakage of the aluminum knee castings caused by lower leg bending moment during side structure deformation. Since changing the rib hinges could potentially affect the acceleration measurements made with the SID, the agency studied the influence of the new hinge material on thoracic response. The agency determined that only insignificant differences in responses occurred.

The agency has also done considerable work to overcome two other durability problems that developed during the first 19 production vehicle tests. Those two problems involved the delamination of the damping material from the ribs of the SID thorax and the presence of approximately one-half inch of permanent deflection in the rib cage following severe impacts. Delamination of the rib damping material could allow mechanically generated signals to interfere with rib acceleration signals and permanent deflection set within the ribcage could significantly alter the geometry of the SID so that errors could occur in the thoracic responses. NHTSA has studied the influence of both of these failure modes on the production vehicle test results and found that the thoracic responses were not significantly altered by either damping material delamination or the permanent set of the ribs. However, to reduce the possibility of any adverse effects, the agency has developed a new method of attaching the damping material to both inner and outer surfaces of the ribs to reduce delamination. Further, NHTSA has adopted the United-McGill damping material used in the Hybrid III dummy. In addition, the SID drawings package shows the dimensions and configuration of the ribs and the SID user's manual specifies a tolerance for the allowable deviation from the specified rib configuration. Together, these will ensure that the test dummy's ribs do not experience excessive permanent deflection after repeated use.

In the PRIA addendum, NHTSA stated that it had determined that the 23 mph rigid wall condition is too severe for testing durability, with TTI(d)'s in excess of 200, far exceeding the full scale production car range. For the proposed SID, incorporating the United-McGill damping material, a 17 mph rigid wall test was selected for durability testing. This sled test condition

corresponds more closely with the upper end of the TTI(d) results that occur in full scale crash tests. In a number of tests discussed in the PRIA addendum, no damping material delamination occurred, and permanent rib bending did not exceed .125 inches.

The agency stated in the NPRM that, overall, it expects the durability of the SID to equal or exceed that of the Hybrid III test dummy. One of the primary reasons for this expectation is that the SID is based on the existing part 572 subpart B test dummy, which is durable enough to be used in 70 full scale, unrestrained, 30 mph frontal crash tests.

As discussed in the FRIA, with the exception of the ribs and pelvis, which are anticipated to last eight crash tests before needing major replacement parts, NHTSA anticipates that the number of SID full scale side impact crash applications will exceed at least 30 tests without needing major repairs.

NHTSA conducted eight additional full scale tests after issuance of the NPRM. In its testing with the SID, the agency did not experience any problems relating to durability. Further, MVMA and Ford did not note any problems relating to durability in their testing with SID.

Mercedes-Benz commented that a weak-point built into the SID upper thigh, which it assumed to be for protection of the dummy, required repair after each test. It recommended installation of a shear-pin at this connection to prevent damage to other dummy components. That company also suggested that installation of a six-channel force transducer at the thigh be considered in lieu of a shear pin, in order to allow measurement of the moments about this joint.

NHTSA notes that its experience with the SID in testing has been different from that of Mercedes. When an earlier version of SID had a shear pin in its leg, the legs were damaged in tests. The agency revised the design in 1984 and, since then, has not experienced any leg durability problems. Since NHTSA has not specified any leg injury criterion, it has not included any moment measurement in the leg joint.

Reliability

Reliability is closely related to durability in that both affect the ability of the tester to achieve valid and repeatable test results. NHTSA considers reliability to be a measure of the ability of the dummy to achieve valid test results when the dummy is properly calibrated and in good working order. NHTSA considers the term durability, on the other hand, to mean the longer term ability of the dummy to remain in calibration, coupled with the ability of the individual dummy components to resist failure.

The agency explained in the NPRM that, for 20 production vehicle tests, there were a total of 160 primary channels of test data collected. In those tests, there were only 3 cases of lost data used for TTI(d) computations and 5 cases of data missing in pelvis acceleration readings. These test results indicated an overall SID data acquisition reliability of 93 percent for TTI(d) and a reliability of 88 percent with respect to pelvis acceleration. The reliability of SID in the additional eight tests conducted after issuance of the NPRM remained consistent.

In reviewing the results of the NHTSA and MVMA full scale tests, the agency concludes that SID is just as reliable as the Hybrid III dummy or the part 572, subpart B dummy.

Repeatability and Reproducibility

As discussed in the NPRM, NHTSA has carefully studied the repeatability and reproducibility of the SID using two methods. The control of the variation of dummy responses for the same device (called repeatability) and among different SID devices (called reproducibility) has been a primary goal of the agency during development of the side impact test dummy.

The agency has used a number of methods to evaluate the repeatability and reproducibility of the SID. In work done for the agency by Calspan, the agency used a statistically-based approach called the Normalized Integrated Squared Error Method in which the amplitude, phase, and shape of the deviations of each individual acceleration-time response curve of the SID is compared to the mean value for all the curves (SAE Paper 831624). The second method used by the agency involved comparing the coefficient of variation for a sample of pendulum data and 23 mph sled test data (Safety Research Laboratory (SRL)–102).

In its study, Calspan established, based on its engineering judgment, a 6 percent range of acceptable variance for repeatability and an 8 percent range of acceptability for reproducibility for the phase, amplitude, and shape of the response acceleration-time curves (SAE Paper 831624). Calspan evaluated a group of six SIDs in a series of 14 and 20 fps pendulum impacts. The results obtained in those tests are representative of the SID test devices used in the early development phases of the agency's side impact program. The results showed that the repeatability and reproducibility of the test dummies were well within the two ranges of variability.

NHTSA's Vehicle Research and Test Center conducted a series of 14 fps pendulum impacts and 23 mph sled tests with some of the SID dummies being used in the 19 full scale production vehicle test program. The coefficients of variance for the 14 fps pendulum qualification tests conducted on two of the test dummies ranged from 4.8 percent to 6.9 percent for one test dummy and 3.8 percent to 4.1 percent for the other, well within the range of acceptability.

The agency also examined the repeatability and reproducibility of the test dummies in 23 mph sled tests. Those tests showed that, for the thorax, spine, and pelvis responses, the repeatability is very high, with coefficient of variation values of 2.9 percent maximum for the ribs, 7.7 percent for the lower spine and 1.7 percent for the pelvis. With respect to reproducibility, the coefficients of variance values for the same three responses among the three SIDs tested were maximums of 2.4, 6.2 and 2.5 percent, respectively. By comparison, the Hybrid III repeatability coefficient of variation values ranged from 2.7 percent to 6.2 percent while reproducibility coefficient of variation values varied from 3.4 percent to 5.2 percent.

In the PRIA addendum, the agency presented repeatability/reproducibility data, derived from sled tests, for SID dummies incorporating the United-McGill damping material. The data indicated that the repeatability of all the proposed SID responses were as good, if not better, than the earlier SID. Except for the pelvis of the proposed SID at 17 mph rigid wall, the reproducibility of the proposed SID appeared to be about the same as the earlier SID. While pelvic reproducibility was not as good for the 17 mph rigid wall condition, with a coefficient of variation of 13 percent, pelvic reproducibility was excellent for the 23 mph padded wall condition, with a coefficient of variation of only 2 percent. Since the agency believes that a padded wall condition is more representative of a car interior, the agency considered the overall reproducibility of the pelvis to be acceptable.

Several commenters argued, notwithstanding the analysis presented in the NPRM and PRIA, that SID lacks repeatability and reproducibility. JAMA argued that its data from five impactor tests indicated that SID lacks repeatability. According to that organization, the coefficient of variation for the SID upper spine acceleration was 10.1 percent. JAMA also argued that SID

lacks reproducibility, even for dummies produced by the same manufacturer. According to that commenter, data from five impactor tests conducted on a pair of SID dummies resulted in a coefficient of variation of 17.7 percent for lower rib acceleration.

Nissan commented that reproducibility even among dummies from the same manufacturer proved unacceptably poor in its tests, which it said were carried out in accordance with the proposed NHTSA procedures. That company stated that it is not satisfied that the data presented by NHTSA has laid to rest the issue of dummy reproducibility, and argued that further testing by the agency is warranted.

CCMC commented that wide calibration tolerances for SID, such as the proposed tolerance of ±20 percent for the pelvis acceleration, are too great to ensure reproducible test results. That commenter argued that under otherwise identical test conditions, widely deviating results, with a range of 40 g to 60 g, can be expected with dummies which perform at the upper or lower limit.

Volkswagen expressed similar concerns to those of CCMC and recommended that the regulation specify that the existence of a manufacturer's development or certification test data at a specific dummy calibration require evidence of conflicting data at the same calibration before a noncompliance investigation can begin. Volkswagen stated that "another result of the physical limitations of the material used to construct the SID is the spread of certain calibration corridors. Wide calibration corridors may provide unintended and unnecessary risks of non-compliance for manufacturers who performed good faith tests indicating compliance with the standard. If certification testing and compliance testing are coincidently conducted with dummies which fall into opposite ends of the allowable calibration spectrum, conflicting results are likely to occur. For example, the calibration tolerances of ±20 percent for the pelvis accelerations are too great to assure reproducible test results. Under otherwise identical test conditions, widely deviating results with a range of 40–60 g's are expected with dummies which perform at the upper or lower limit. This tolerance is not acceptable for a regulatory compliance test device."

Volvo also expressed concern about the proposed calibration tolerance bands. That company noted that the agency proposed tolerance bands of ±11 percent for rib acceleration, ±20 percent for pelvis acceleration, and ±19 percent for lower spinal acceleration. Volvo stated that for most other dummies used in development and compliance testing, including three part 572 dummies, the accepted calibration tolerance bands are approximately ±10 percent for measurements from which injury criteria are calculated. That commenter stated that it is not acceptable that tolerance bands as wide as ±20 percent exist on measurements used in the calculation of TTI and pelvic acceleration.

Toyota argued, based on calibration tests of five SID dummies produced by two manufacturers, that repeatability was poor even for one dummy, and that there were marked differences between individual dummies made by the same manufacturer as well as differences between the two manufacturers' dummies. That company also argued that the proposed calibration tolerances are so large as to make objective testing impossible. Toyota argued that if it is too difficult to narrow the measurement range, it will be necessary to have the means to compensate for the test results by employing the calibration results.

Toyota also stated that it believes that if there is to be satisfactory repeatability in full scale testing, the differences in the impact response characteristics of the individual dummy parts must be minimized. Toyota stated that it discovered great differences in the force-crush characteristics of the arm foam of the five SID dummies, and argued that the agency should set clear SID component performance parameters for critical SID components, i e., arm foam, ribs, rib wrap, etc.

After considering the comments, NHTSA continues to believe that SID has adequate repeatability and reproducibility. The agency notes that commenter concerns about SID repeatability/reproducibility were for the most part based either on the results of calibration tests conducted according to the proposal, or on the proposed calibration tolerance bands.

In addressing those comments, the agency believes it appropriate to first discuss the purpose of the proposed calibration tests. Before a test dummy can be used in a vehicle crash test, it must be examined to determine whether it conforms to all of the specifications set out in the blueprints for the dummy. In addition, the dummy must be carefully examined to make sure that it has been correctly assembled. Finally, the test dummy must pass a series of calibration tests, which are also referred to as qualification tests. The purpose of a qualification test is to measure the performance of the test dummy in a well-controlled laboratory impact test to determine whether the test dummy's responses are within specifications and thus the test dummy will provide objective results.

The agency proposed two calibration tests for the side impact test dummy. The first is a 14 fps pendulum impact to the center of the side of the thorax on the side to be struck. The purpose of that test is to measure the response of the upper and lower rib and the lower spine. The proposed qualification limits in those tests were that the upper rib must experience an acceleration that is not less than 37 g's and not more than 46 g's, the lower rib must experience between 37 and 46 g's and the lower spine 15 to 22 g's. The other test involves a 14 fps pendulum impact to the pelvis to measure the pelvic responses. The proposed limits were that the acceleration measured in the pelvis shall be not less than 40 g's and not more than 60 g's. In addition, the acceleration-time curve must be unimodal and lie at or above the +20 g level for not less than 3 milliseconds and not more than 7 milliseconds.

While NHTSA has considered various pendulum tests, including calibration tests, in evaluating repeatability/reproducibility, it does not consider them to be the most reliable tests for such evaluation. The energy imparted into a dummy in calibration testing is much lower than the energy that the dummy will receive in full scale testing. The dummy is a device made up of many mechanical components and built in frictions which will vary from dummy to dummy. This will affect how the dummies respond in the low energy calibration tests to a far greater degree than the high energy of full scale testing. This produces higher variance in low speed calibration tests than will be experienced in higher severity full scale tests. This is illustrated by the fact that in a repeatability test series conducted by NHTSA under its New Car Assessment Program (for frontal protection, using a different dummy), differences in dummy calibration results had "no * * * correlation to dummy response results in the vehicle crash event." SAE paper 840201, February 1984. NHTSA believes that the proposed calibration tests for SID, with their present spread, ensure that the dummies being delivered are built alike and that they will give like responses during full scale tests.

The agency believes that the best tests for evaluating dummy repeatability are sled tests at a speed equivalent to full scale test inner door impact speeds. Sled tests can be better than vehicle tests for this purpose because sled tests

eliminate full scale vehicle test variability. The results of such a series of sled tests, cited above, indicated that SID has good repeatability/reproducibility.

NHTSA also notes that full scale side impact test data, discussed in the main side impact notice, indicate good repeatability/reproducibility. Since dummy repeatability/reproducibility is reflected in full scale test results, the full scale data support the conclusion that SID has good repeatability/reproducibility.

Since sled test data and full scale crash test data indicate that SID has good repeatability/reproducibility, NHTSA concludes that the inherently greater variability found in calibration tests is not a problem. The agency similarly concludes that the proposed calibration tolerance bands will not result in poor repeatability/reproducibility.

With respect to Toyota's claim that additional component performance parameters should be established for critical SID components, NHTSA notes that extensive specifications have already been provided for the SID, as well as qualification tests. The agency does not believe that company has demonstrated that additional specifications are needed to ensure repeatability/reproducibility in the side impact full scale test.

Qualification Tests

NHTSA notes that the proposed qualification tests are discussed at some length in the preceding section on repeatability/reproducibility,and that discussion will not be repeated.

NHTSA explained in the NPRM that, with one exception, both proposed qualification tests utilize readily available compliance test equipment, instrumentation and procedures that are already used in qualification testing of other test dummies. The one exception is the use of a Finite Impulse Response (FIR) filter to process the acceleration data measured in the test. The agency proposed the use of the FIR filtering methodology to process acceleration signals, rather than the standard SAE practice, since the FIR filtering technique was used with the cadaver impact data and with the sled and vehicle test data. Some additional steps are needed in handling the thorax response data. A special Fortran software package, called FIR100, developed by the agency is necessary to process the data (see Docket No. 79–04–N02–018). Based on its experience, NHTSA does not anticipate that crash data processing would be significantly affected by requiring the use of the FIR filter by the manufacturers and compliance test laboratories.

The agency noted that the two specified qualification tests for the SID require less labor and are less expensive compared to the tests used with the part 572 subpart B and the Hybrid III in a Standard No. 208 compliance test. The part 572, subpart B test dummy must pass 10 qualification tests and the Hybrid III must pass 9 tests. Although the SID has significantly fewer qualification requirements, hence lower labor costs per test, some of that benefit may be offset, for example, in replacing ribs or sections of ribs if the qualification corridors are not met. The SID chest appears to be more complicated than the Hybrid III thorax and could be more labor intensive if repairs are needed.

As discussed above, a number of commenters argued that the proposed calibration tolerances for SID are too wide to ensure repeatable test results. The concerns about repeatability are addressed above. NHTSA is not narrowing the calibration limits, since to do so would make it more difficult to calibrate the dummies. The calibration limits are based on consideration of a large amount of test data.

Toyota stated that it believes the 4.27 m/s speed in the calibration test, compared to the 10 to 12 m/s secondary collision speed in the full scale test is too low. It argued that the speed must be raised if dummy performance is to be assured in full scale testing.

NHTSA notes that the calibration tests are not the primary means for ensuring repeatability/reproducibility in full scale testing. The primary means involve detailed specification of all dummy parts. The calibration tests serve as a final check on uniformity of construction, assembly and instrumentation. The tests also help indicate if a dummy has been damaged in a prior test. NHTSA believes that the proposed speeds are adequate for these purposes. If higher speeds were selected, the calibration tests themselves could potentially result in damage to the dummy, because of the concentrated loading in such tests.

Toyota stated that it conducted calibration tests on five SID dummies, three produced by ARL and two produced by Humanoid, and was not able to calibrate them. It stated that this problem can be attributed to variations in dummy manufacture, and expressed concern that it and other auto manufacturers could be forced to spend time and money on dummy adjustment, procurement of components and retesting before any SID could be used in actual certification testing.

Nissan stated that it conducted calibration tests using four assemblies of SID, and none of the assemblies satisfied the proposed calibration requirements.

When a new SID dummy is purchased, the purchaser should check it carefully to ensure that it meets the specifications established by NHTSA. Also, adjustments to the dummy may be necessary to bring it within the specified calibration bands.

The agency is aware that some SID dummies have been delivered with materials that do not meet specifications. For example, inspections of dummies by NHTSA staff have revealed such things as rib hinges mounted with the wrong orientation, rib damping material extending too far along the rib at the spine end, and rib wrap and arm parts made from the wrong foam. NHTSA considers it unfortunate that these types of manufacturing deficiencies sometimes occur. Some of the deficiencies may be attributable to start-up problems in producing a new dummy, and are not different from the problems experienced with other new dummies. However, dummy purchasers can resolve these sorts of problems by careful inspection of the dummies and by working with the dummy manufacturer. By taking these actions, and making appropriate dummy adjustments, users can bring their dummies within the specified calibration bands.

Temperature Sensitivity

As discussed in the NPRM, the agency developed the side impact test procedure, and the application of the SID dummy, around a 66 °F to 78 °F interior occupant temperature range, the same as required for the part 572 subpart B dummy used in Standard No. 208 tests. The similarity in construction of the chests of the SID, part 572, subpart B, and Hybrid III have made the agency particularly aware of response variations due to changes in temperature and of the importance of a practicable test temperature range for side impact compliance tests.

The test procedure specifies that the SID be placed in a controlled temperature environment for at least four hours within a 66–78 °F temperature range prior to each crash test. In addition, the SID is to be maintained within this temperature range during the crash test. NHTSA has found in its crash testing of production vehicles that it is possible to maintain the temperature of the test dummy within the required range prior to the test by using a portable heating or air conditioning unit,

as necessary. In cases of extremely low or high temperatures, the agency has found that the use of a portable garage can provide a controlled ambient temperature of approximately 72 °F.

At the time of the NPRM, the agency did not have temperature sensitivity data. Since that time, the agency has conducted a test series, and the temperature sensitivity of the SID appears to be superior to that of Hybrid III and comparable to the part 572 subpart B dummy. The FRIA presents data comparing SID sensitivity with the part 572 subpart B and the Hybrid III dummy.

FIR Filter

The FIR filter is used in the side impact test procedure to select rib, spine and pelvis responses from acceleration signals.

Ford commented that FIR filter differences need to be resolved. That company stated that, for use in compliance testing, the FIR filter procedure must be specified in detail. Ford stated that, in particular, the agency must specify the type of SAE Class 180 prefilter that must be used (i.e., Butterworth, Chebyshev, etc.), how bias is handled, subsample rate and the digital software coding. That company stated that it believes the present FIR filter specification could lead to significant differences in test results between different testing laboratories.

In light of Ford's concerns about possible variability, NHTSA is specifying use of its own computer program called FIR100. See Docket No. 79–04, Notice 2, item 18.

Alternative Dummies

As part of its side impact rulemaking, NHTSA has considered two alternative dummies to SID, EuroSID and BioSID. As discussed in the NPRM, the EuroSID dummy was developed by a group of European research organizations under the auspices of the European Experimental Vehicles Committee (EEVC). Subsequent to issuance of the NPRM, GM developed the BioSID dummy, in cooperation with the Society of Automotive Engineers.

NHTSA tested a prototype or pre-production EuroSID dummy and concluded that it was well designed and durable for the conditions tested, possessed "good" repeatability, and could be used to assess potential countermeaures. The biofidelity was equivalent to the SID in both pendulum and sled tests and was essentially equivalent to the SID in terms of acceleration responses, wall loading, and TTI(d) computation.

One of the advantages of the EuroSID is that it measures chest deflection and velocity and can therefore be used to measure Viscous Injury Criterion (V*C) as well as TTI(d). (A discussion of alternative thoracic injury criteria, including V*C, is provided in the main side impact notice.)

One of the problems discovered in NHTSA's EuroSID sled tests was that the ribs were bottoming out, which may have invalidated the V*C measurements being made. This condition was characterized by a flat spot on the displacement-time history curve, while the acceleration-time history curve showed an increase with time until the peak g was reached. Although considerable attempts were made to correlate V*C and TTI(d), the deflection data collected continued to be questionable. The EuroSID specifications also have changed since NHTSA tested the prototype. In view of this, NHTSA returned one of two EuroSIDs so that it could be retrofitted in accordance with its latest specifications.

In 1988, MVMA conducted a full scale crash test series using the prototype EuroSID dummy in a variety of test configurations: (1) NHTSA test procedure and the EuroSID dummy, (2) NHTSA test procedure with EEVC barrier face and the EuroSID dummy, and (3) the European test procedure. In the MVMA data set, the same rib deflection bottoming phenomenon was observed calling into question the validity of the V*C measures that were made. TTI(d) measurements were also taken in that test program. See Docket No. 88–06–N01–089.

NHTSA recently conducted a series of 20 mph sled tests comparing the ability of the retrofitted EuroSID, SID and BioSID to discriminate between padding types using the TTI(d). The results indicate that as an acceleration based tool, the EuroSID is comparable to the other side impact dummies.

The BioSID dummy was designed to conform to the ISO biofidelity corridors and can measure rib deflection for the computation of V*C. NHTSA purchased two pre-production BioSIDs, and as discussed above, has conducted a 20 mph sled test series to compare the ability of BioSID and the other two dummies to discriminate between different types of padding material using the TTI(d). As discussed in the FRIA, BioSID's performance was equivalent to the SID and the EuroSID in selecting the optimum padding using TTI(d) as the injury criterion. NHTSA has initiated an independent test program to further study the BioSID and evaluate its suitability as an alternative side impact dummy (e.g., sled tests and full scale crash tests). In addition, MVMA has recently completed a full scale crash test program at the GM Proving Grounds using the BioSID and the SID to establish full scale crash comparability between the two test devices.

NHTSA recognizes that BioSID and EuroSID have potential advantages over SID to the extent that they can measure V*C or other compression-based injury criteria in addition to TTI(d). Specification of EuroSID as an alternate test device could also promote international harmonization.

However, the agency does not believe that these potential advantages should lead to a delay in this rulemaking for further consideration of alternate dummies. NHTSA believes that TTI(d) is a reliable predictor for thoracic injury and that SID is fully developed and validated. Since SID is ready now, and a final rule specifying SID can result in significant safety benefits, the agency believes it is appropriate to now go to a final rule using the SID.

Assuming that NHTSA's review of the BioSID is satisfactory, the agency intends to propose the use of the BioSID as an alternate test device. Europe is continuing to work on the EuroSID. If the agency obtains data showing that EuroSID compares satisfactorily with SID, it may also propose that dummy as an alternate test device.

Drawing Package

As indicated earlier in this notice, the specifications for SID consist of a drawing package containing all of the technical details of the dummy parts and dummy assembly, and a set of master patterns for all molded and cast parts of the dummy. There is also a SID user's manual containing disassembly, inspection, and assembly procedures; external dimensions and weight; and a dummy drawing list. The drawings and specifications are provided to ensure that the dummies will not significantly vary in their construction.

Regulatory Impacts

As indicated at the beginning of this preamble, this final rule supplements a separate final rule being published elsewhere in this issue of the **Federal Register** that amends Standard No. 214 to establish a new dynamic test requirement for passenger cars. This final rule for the specifications and qualification requirements for the new side impact test dummy is part of that rulemaking. As such, it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's

regulatory policies and procedures. The agency has prepared a single Final Regulatory Impact Analysis (FRIA) which describes the economic and other effects of the entire rulemaking. The analysis is available in the docket for the dynamic test requirement final rule.

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The primary cost effect of this rule is on passenger car manufacturers. Few, if any, passenger car manufacturers would qualify as small entities. Manufacturers which would qualify as small entities, small organizations and governmental units should not be significantly affected since the potential increases associated with this action should only slightly affect the purchase price of new motor vehicles.

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the requirements do not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

PART 572—[AMENDED]

In consideration of the foregoing, 49 CFR part 572 is amended as follows:

1. The authority citation for part 572 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. A new subpart F, consisting of sections 572.40 through 572.44, is added to read as follows:

Subpart F—Side Impact Dummy 50th Percentile Male

Sec.

Subpart F—Side Impact Dummy 50th Percentile Male

§ 572.40 Incorporated materials.

(a) The drawings, specifications, manual, and computer program referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. A notice of any change will be published in the Federal Register. As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The materials incorporated in this part by reference are available for examination in the general reference section of Docket 79–04, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street, NW., Washington,DC. 20005, telephone (202) 628–6667 or 408–8789.

§ 572.41 General description.

(a) The dummy consists of component parts and component assemblies (SA–SID–M001 and SA–SID–M001A) which are described in approximately 250 drawings and specifications that are set forth in part 572.5(a) of this chapter with the following changes and additions which are described in approximately 85 drawings and specifications (incorporated by reference; see §572.40):

(1) The head assembly consists of the assembly specified in subpart B (§ 572.6(a)) and conforms to each of the drawings subtended under drawing SA 150 M010 and drawings specified in SA–SID–M010, dated August 13, 1987.

(2) The neck assembly consists of the assembly specified in subpart B (§ 572.7(a)) and conforms to each of the drawings subtended under drawing SA 150 M020 and drawings shown in SA–SID–M010, dated August 13, 1987.

(3) The thorax assembly consists of the assembly shown as number SID–053 and conforms to each applicable drawing subtended by number SA SID–M030, dated August 13, 1987.

(4) The lumbar spine consists of the assembly specified in subpart B (§ 572.9(a)) and conforms to drawing SA 150 M050 and drawings subtended by SA–SID–M050, dated August 13, 1987.

(5) The abdomen and pelvis consist of the assembly specified in subpart B (§ 572.9) and conform to the drawings subtended by SA 150 M060 and drawings subtended by SA–SID–M060, dated August 13, 1987.

(6) The lower limbs consist of the assemblies specified in subpart B (§ 572.10) shown as SA 150 M080 and SA 150 M081 in Figure 1 and SA–SID–M080 and SA–SID–M081, both dated August 13, 1987, and conform to the drawings subtended by those numbers.

(b) The structural properties of the dummy are such that the dummy conforms to the requirements of this subpart in every respect both before and after being used in vehicle tests specified in Standard No 214 §571.214 of this chapter.

(c) Disassembly, inspection, and assembly procedures; external dimensions and weight; and a dummy drawing list are set forth in the Side Impact Dummy (SID) User's Manual, dated July 1990 (incorporated by reference; see § 572.40).

§ 572.42 Thorax.

(a) When the thorax of a completely assembled dummy (SA–SID–M001A), appropriately assembled for right or left side impact, is impacted by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak accelerations at the location of the accelerometers mounted on the thorax in accordance with § 572.44(b) shall be:

(1) For the accelerometer at the top of the Rib Bar on the struck side (LUR or RUR) not less than 37 g's and not more than 46 g's.

(2) For the accelerometer at the bottom of the Rib Bar on the struck side (LLR or RLR) not less than 37 g's and not more than 46 g's.

(3) For the lower thoracic spine (T12) not less than 15 g's and not more than 22 g's.

(b) Test Procedure. (1) Adjust the dummy legs as specified in § 572.44(f). Seat the dummy on a seating surface as specified in § 572.44(h) with the limbs extended horizontally forward.

(2) Place the longitudinal centerline of the test probe at the lateral side of the chest at the intersection of the centerlines of the third rib and the Rib Bar on the desired side of impact. This is the left side if the dummy is to be used on the driver's side of the vehicle and the right side if the dummy is to be used on the passenger side of the vehicle. The probe's centerline is perpendicular to thorax's midsagittal plane.

(3) Align the test probe so that its longitudinal centerline coincides with

the line formed by the intersection of the transverse and frontal planes perpendicular to the chest's midsagittal plane passing through the designated impact point.

(4) Position the dummy as specified in § 572.44(h), so that the thorax's midsagittal plane and tangential plane to the Hinge Mounting Block (Drawing SID–034) are vertical.

(5) Impact the thorax with the test probe so that at the moment of impact at the designated impact point, the probe's longitudinal centerline falls within 2 degrees of a horizontal line perpendicular to the dummy's midsagittal plane and passing through the designated impact point.

(6) Guide the probe during impact so that it moves with no significant lateral, vertical or rotational movement.

(7) Allow a time period of at least 20 minutes between successive tests of the chest.

§ 572.43 Lumbar spine and pelvis.

(a) When the pelvis of a fully assembled dummy (SA–SID–M001A) is impacted laterally by a test probe conforming to § 572.44(a) at 14 fps in accordance with paragraph (b) of this section, the peak acceleration at the location of the accelerometer mounted in the pelvis cavity in accordance with § 57–2.44(c) shall be not less than 40g and not more than 60g. The acceleration-time curve for the test shall be unimodal and shall lie at or above the +20g level for an interval not less than 3 milliseconds and not more than 7 milliseconds.

(b) Test Procedure. (1) Adjust the dummy legs as specified in § 572.44(f). Seat the dummy on a seating surface as specified in § 572.44(h) with the limbs extended horizontally forward.

(2) Place the longitudinal centerline of the test probe at the lateral side of the pelvis at a point 3.9 inches vertical from the seating surface and 4.8 inches ventral to a transverse vertical plane which is tangent to the back of the dummy's buttocks.

(3) Align the test probe so that at impact its longitudinal centerline coincides with the line formed by intersection of the horizontal and vertical planes perpendicular to the midsagittal plane passing through the designated impact point.

(4) Adjust the dummy so that its midsagittal plane is vertical and the rear surfaces of the thorax and buttocks are tangent to a transverse vertical plane.

(5) Impact the pelvis with the test probe so that at the moment of impact the probe's longitudinal centerline falls within 2 degrees of the line specified in paragraph (b)(3) of this section.

(6) Guide the test probe during impact so that it moves with no significant lateral, vertical or rotational movement.

(7) Allow a time period of at least 2 hours between successive tests of the pelvis.

§ 572.44 Instrumentation and test conditions.

(a) The test probe used for lateral thoracic and pelvis impact tests is a 6 inch diameter cylinder that weighs 51.5 pounds including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 0.5 inches.

(b) Three accelerometers are mounted in the thorax for measurement of lateral accelerations with each accelerometer's sensitive axis aligned to be closely perpendicular to the thorax's midsagittal plane. The accelerometers are mounted in the following locations:

(1) One accelerometer is mounted on the Thorax to Lumbar Adaptor (SID–005) by means of a T12 Accelerometer Mounting Platform (SID–009) and T12 Accelerometer Mount (SID–038) with its seismic mass center at any distance up to 0.4 inches from a surface point on the Thorax to Lumbar Adaptor where two perpendicular planes aligned with the adaptor's vertical and horizontal center lines intersect.

(2) Two accelerometers are mounted, one on the top and the other at the bottom part of the Rib Bar (SID–024) on the struck side. Their seismic mass centers are at any distance up to .4 inches from a point on the Rib Bar surface located on its longitudinal center line .75 inches from the top for the top accelerometer and .75 inches from the bottom, for the bottom accelerometer.

(c) One accelerometer is mounted in the pelvis for measurement of the lateral acceleration with its sensitive axis perpendicular to the pelvic midsagittal plane. The accelerometer is mounted on the rear wall of the instrument cavity (Drawing SID–037), with its seismic mass center located up to 0.30 inches from the point of intersection of the cover plate centerlines and 0.34 inches rearward of the rear wall of the instrument cavity.

(d) Instrumentation and sensors used must conform to the SAE J–211 (1980) recommended practice requirements (incorporated by reference; see § 572.40). The outputs of the accelerometers installed in the dummy are then processed with the software for the Finite Impulse Response (FIR) filter (FIR 100 software). The FORTRAN program for this FIR 100 software (FIR100 Filter Program, Version 1.0, July 16, 1990) is incorporated by reference in this Part (see § 572.40). The data are processed in the following manner:

(1) Analog data recorded in accordance with SAE J–211 (1980) recommended practice channel class 1000 specification.

(2) Filter the data with a 300 Hz, SAE Class 180 filter;

(3) Subsample the data to a 1600 Hz sampling rate;

(4) Remove the bias from the subsampled data, and

(5) Filter the data with the FIR100 Filter Program (Version 1.0, July 16, 1990), which has the following characteristics—

(i) Passband frequency, 100 Hz.

(ii) Stopband frequency, 189 Hz.

(iii) Stopband gain, −50 db.

(iv) Passband ripple, 0.0225 db.

(e) The mountings for the spine, rib and pelvis accelerometers shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(f) Limb joints of the test dummy are set at the force between 1–2 g's, which just supports the limbs' weight when the limbs are extended horizontally forward. The force required to move a limb segment does not exceed 2 g's throughout the range of limb motion.

(g) Performance tests are conducted at any temperature from 66 °F to 78 °F and at any relative humidity from 10 percent to 70 percent after exposure of the dummy to these conditions for a period of not less than 4 hours.

(h) For the performance of tests specified in §§ 572.42 and 572.43, the dummy is positioned as follows:

(1) The dummy is placed on a flat, rigid, clean, dry, horizontal smooth aluminum surface whose length and width dimensions are not less than 16 inches, so that the dummy's midsagittal plane is vertical and centered on the test surface. The dummy's torso is positioned to meet the requirements of § 572.42 and § 572.43. The seating surface is without the back support and the test dummy is positioned so that the dummy's midsagittal plane is vertical and centered on the seat surface.

(2) The legs are positioned so that their centerlines are in planes parallel to the midsagittal plane.

(3) Performance pre-tests of the assembled dummy are separated in time by a period of not less than 20 minutes unless otherwise specified.

(4) Surfaces of the dummy components are not painted except as specified in this part or in drawings subtended by this part.

Issued on October 24, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-25393 Filed 10-24-90; 11:15 am]

BILLING CODE 4910-59-M

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49 CFR Part 586

[Docket No. 88-06; Notice 10]

RIN 2127-AB86

Reporting Compliance With Phasing-in of Dynamic Side Impact Test Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This notice establishes reporting and recordkeeping requirements necessary for NHTSA to enforce the phasing-in of the new dynamic test requirements in the amended Standard No. 214, *Side Impact Protection*, which appears elsewhere in today's **Federal Register**. NHTSA proposed on January 27, 1988 to establish such reporting requirements.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective November 29, 1990, except for the information collection requirements in §§ 586.5 and 586.6. These information collection requirements have not been approved by the Office of Management and Budget (OMB) and the requirements in §§ 586.5 and 586.6 are not effective until OMB has approved them. NHTSA will issue a notice in the future establishing an effective date for the information collection requirements. Petitions for reconsideration of this final rule must be filed by November 29, 1990.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number of this notice and be submitted to Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Motor Vehicle Safety Standards, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-0842)

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 1988, NHTSA proposed to amend Standard No. 214 to supplement the existing quasi-static test procedures and performance requirements with dynamic test procedures and performance requirements for passenger cars. The proposed test procedure was a dynamic simulation of a vehicle striking a car in the side in a typical intersection side impact crash. Elsewhere in today's **Federal Register**, NHTSA adopts the final rule amending Standard No. 214. Two alternative compliance schedules are established, the choice of which is at the option of the manufacturer. Under the first schedule, each manufacturer of passenger cars will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles manufactured during the 12 month period beginning September 1, 1993;

25 percent of automobiles manufactured during the 12 month period beginning September 1, 1994;

40 percent of automobiles manufactured during the 12 month period beginning September 1, 1995; and

All automobiles manufactured on or after September 1, 1996.

Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

NHTSA stated in the preamble of the proposed side impact rule that it was proposing to adopt reporting and recordkeeping requirements to facilitate implementation of the dynamic side impact requirements. NHTSA further stated that the proposed reporting and recordkeeping requirements would be similar to those adopted in connection with the phase-in of the automatic restraint requirements for passenger cars in Standard No. 208, *Occupant Crash Protection*. NHTSA did not receive any comments regarding the proposed reporting and recordkeeping requirements for the side impact phase-in.

II. Description of the Final Rule

NHTSA is adopting reporting and recordkeeping requirements almost identical to those adopted for Standard No. 208. Under this rule, manufacturers are required to submit reports to NHTSA for each of the side impact phase-in periods. Each report, covering production during a 12-month period beginning September 1 and ending August 31, would be required to be submitted within 60 days after the end of that period. Three reports would have to be filed. The filing deadlines would be 60 days after (1) August 31, 1994, (2) August 31, 1995, and (3) August 31, 1996.

Information required in each report includes a statement regarding whether or not the manufacturer complied with the phase-in and the basis for that statement. If a manufacturer chooses the second compliance option (i.e., none of their fleet must meet the requirements the first year of the phase-in, but all of their fleet must meet the requirements the second and third years of the phase-in), the manufacturer would state this in the report due 60 days after August 31, 1994. Manufacturers would also have to include the following information in their reports (except the report due 60 days after August 31, 1994 for manufacturers who choose the second compliance option): the number of passenger cars manufactured for sale in the United States for each of the three previous 12-month production periods; the actual number of passenger cars manufactured during the reporting production period that meet the requirements of the amended Standard No. 214; and brief information about any express written contracts in which manufacturers of passenger cars produced by more than one manufacturer determine which manufacturer would count the cars as its own during a given year of the phase-in of Standard No. 214.

The reporting requirements adopted in this rule are necessary for the three-year period of the phase-in of the new test procedures and performance requirements under Standard No. 214. The information specified by the requirements will enable the agency to carry out its statutory duty to monitor compliance with the Federal motor vehicle safety standards. During the phase-in, only a certain percentage of vehicles are required to meet the new requirements of Standard No. 214. It would be virtually impossible for NHTSA to determine if the appropriate percentage of passenger cars has met the new requirements of Standard No. 214 unless manufacturers provide production information to the agency. Thus, NHTSA is requiring manufacturers to report information on both the total number of cars produced and the number of cars produced that meet the requirements of the revised Standard No. 214. NHTSA is requiring reporting of the number of cars manufactured for sale in the United States during each of the three previous 12-month production periods because Standard No. 214 allows manufacturers the option of using the average production volume during the last three production years to determine the number of cars that must meet the requirements of the revised Standard No. 214. Manufacturers are required to provide a statement regarding whether

or not they complied with the phase-in and the basis for that statement. This provision requires a manufacturer to show that they produced the requisite percentage of cars that meet the dynamic testing and performance requirements of the revised Standard No. 214. This percentage could be based on either that 12-month production volume or the average production volume for the three previous 12-month production periods.

This rule also requires manufacturers to report brief information about any express written contracts concerning passenger cars produced by more than one manufacturer. In the revised Standard No. 214, published elsewhere in today's Federal Register, NHTSA explains which company generally will be considered the manufacturer of a car that is manufactured by two or more companies or manufactured by one company and imported by another. The Standard generally attributes a car to the manufacturer which is most responsible for the existence of the vehicle in the United States. Thus, a car is generally attributed to the company which imported the vehicle; manufactured the vehicle for its own account as part of a joint venture; or marketed the vehicle. However, NHTSA also gives manufacturers the flexibility to determine contractually which manufacturer would count the car as its own toward the required percentage for a given year of the phase-in. That provision of Standard No. 214 is based on an almost identical provision in Standard No. 208.

This rule also includes a provision allowing manufacturers to request an extension of the deadline for filing a report. This provision is identical to that in the rule establishing reporting for Standard No. 208. NHTSA does not believe that complying with the requirement that reports be submitted within 60 days after the end of each production year will be a problem for manufacturers (including importers), except in extreme situations. However, to accommodate those situations, NHTSA is allowing manufacturers to seek an extension of the deadline for filing a report, by submitting a request for extension at least 15 days before the report is due. As provided in the rule, the filing of a request for an extension does not automatically extend the time for filing a report. The rule provides that NHTSA will grant such an extension only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

The recordkeeping provisions in this final rule require manufacturers to maintain records of the Vehicle Identification Number (VIN) for each passenger car which meets the new dynamic testing and performance requirements of the amended Standard No. 214. This provision is almost identical to one adopted in connection with Standard No. 208. NHTSA is requiring that the information be maintained by manufacturers until December 31, 1998. The purpose of this requirement is to ensure that such information will be available until the completion of any agency enforcement action begun after the final phase-in report is filed in 1996. Manufacturers are not required to keep the VIN information in a separate file. As long as the VIN information is retrievable, it may be stored in any manner that is convenient to a manufacturer.

III. Regulatory Impacts

A. Executive Order 12291

As indicated earlier in this preamble, this rule supplements a separate final rule establishing new test procedures and performance requirements for side impact under Standard No. 214. This rule establishing reporting and recordkeeping requirements in connection with the phase-in of the new requirements of Standard No. 214 is part of that rulemaking. As such, it is considered a major rule within the meaning of Executive Order 12291. It is also considered to be significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has prepared a Final Regulatory Impact Analysis, which describes the economic and other effects of the entire rulemaking. This analysis is available in the docket for the side-impact rulemaking. NHTSA anticipates that the reporting and recordkeeping requirements will have a minimal impact on manufacturers.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, NHTSA has not prepared a regulatory flexibility analysis.

Few, if any, passenger car manufacturers are considered small entities. Small organizations or governmental units will not likely be significantly affected. Any price increases associated with this final rule will be modest and should not affect the purchasing of new cars by these entities. Accordingly, no regulatory flexibility analysis has been prepared. The impact of the rest of the side impact rulemaking is discussed in other notices.

C. Paperwork Reduction Act

The reporting and recordkeeping requirements in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to the OMB for its approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the Federal Register when OMB makes its decision on this request.

D. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this final rule. The agency has determined that the final rule will not have a significant impact on the quality of the human environment.

E. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 586

Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter V, title 49, Transportation, the Code of Federal Regulations is amended by adding a new part 586 to read as follows:

PART 586—SIDE IMPACT PHASE-IN REPORTING REQUIREMENTS

Sec.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

§ 586.1 Scope.

This section establishes requirements for passenger car manufacturers to submit a report, and maintain records related to the report, concerning the number of passenger cars manufactured that meet the dynamic test procedures and performance requirements of

Standard No. 214, *Side Impact Protection* (49 CFR 571.214).

§ 586.2 Purpose.

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 214 of this Chapter (49 CFR 571.214) concerning dynamic test procedures and performance requirements concerning side impact protection.

§ 586.3 Applicability.

This part applies to manufacturers of passenger cars.

§ 586.4 Definitions.

(a) All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

(b) *Passenger car* is used as defined in 49 CFR 571.3.

(c) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 586.5 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 1994, August 31, 1995, and August 31, 1996, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of S3(c) of Standard No. 214 for its passenger cars produced in that year. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the dynamic testing and performance requirements of the amended Standard No. 214 for the period covered by the report and the basis for that statement;

(5) Provide the information specified in § 586.5(b), except that this information need not be submitted with the report due 60 days after August 31, 1994 if the manufacturer chooses the compliance option specified in S3(d) of 49 CFR 571.214;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(b) *Report content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that is, for the first time, manufacturing passenger cars for sale in the United States must report the number of passenger cars manufactured during the current production year.

(2) *Production.* Each manufacturer shall report for the production year being reported on, and each preceding production year, to the extent that cars produced during the preceding years are treated under Standard No. 214 as having been produced during the production year being reported on, information on the number of passenger cars that meet the dynamic test procedure and performance requirements of S5 and S6 of Standard No. 214.

(3) *Passenger cars produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S8.4.2 of Standard No. 214 shall:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how the contract affects the report being submitted.

(ii) Report the actual number of passenger cars covered by each contract.

§ 586.6 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number for each passenger car for which information is reported under § 586.5(b)(2) until December 31, 1997.

§ 586.7 Petition to extend period to file report.

A petition for extension of the time to submit a report must be received not later than 15 days before expiration of the time stated in § 586.5(a). The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest.

Issued on October 24, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-25394 Filed 10-24-90; 11:15 am]

BILLING CODE 4910-59-M

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49 CFR Part 587

[Docket No. 88-06; Notice 9]

RIN 2127-AB86

Side Impact Protection; Moving Deformable Barrier

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This notice establishes specifications for the weight, dimensions, stiffness, and other attributes of the moving deformable barrier that is to be used in the dynamic, barrier-to-car crash test specified under the amendments to Standard No. 214, *Side Impact Protection*, which appear elsewhere in today's **Federal Register**. NHTSA proposed the specifications for the moving deformable barrier on January 27, 1988.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective November 29, 1990. However, the substantive requirements of the revised Standard No. 214 are phased in over a three-year period beginning on September 1, 1993. Compliance will be required for all new cars manufactured on or after September 1, 1996. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 29, 1990. Petitions for reconsideration of this final rule must be filed by November 29, 1990.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number of this notice and be submitted to Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. It is requested that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-0842).

SUPPLEMENTARY INFORMATION:

I. Background

On January 27, 1988, NHTSA proposed to amend Standard No. 214 to supplement the existing quasi-static test procedures and performance requirements with dynamic test procedures and performance requirements for passenger cars. The proposed test procedure was a dynamic simulation of a vehicle striking a car in the side in a typical intersection side impact crash. That notice also proposed to use a moving deformable barrier (MDB) developed by NHTSA in the proposed test procedure The barrier was described in the preamble of the proposed rule and complete design drawings of the MDB were placed in a rulemaking docket and were available for public comment.

Elsewhere in today's **Federal Register**, NHTSA publishes a final rule adopting the dynamic test amendments to Standard No. 214. Under that rule, two alternative compliance schedules are established, the choice of which is at the option of the manufacturer. Under the first schedule, each manufacturer of passenger cars will have to meet the new side impact performance requirements based on the following phase-in schedule:

10 percent of automobiles manufactured during the 12 month period beginning September 1, 1993;
25 percent of automobiles manufactured during the 12 month period beginning September 1, 1994;
40 percent of automobiles manufactured during the 12 month period beginning September 1, 1995; and
All automobiles manufactured on or after September 1, 1996.

Under the other schedule, no compliance will be required during the production year beginning September 1, 1993, but full implementation will be required effective September 1, 1994.

This notice describes the MDB that is to be used for the new test procedures established as part of the amendments to Standard No. 214. The description of the MDB will be codified in a new part 587, *Moving Deformable Barrier*. The MDB adopted in this final rule is the same as the one described in the January 27, 1988 proposal to amend Standard No. 214.

II. Description of the Moving Deformable Barrier

The MDB described in this rule is a steel structure with a 102 inch wheelbase, a 63 inch track width, and two aluminum honeycomb blocks on the front. This latter feature is to simulate the energy absorption characteristics of a striking vehicle. One block has a high compression strength of 245 pounds per square inch (psi), is 4 inches by 8 inches by 66 inches and its centerline is mounted 17 inches above the ground to simulate the bumper/frame of the striking vehicle. The other honeycomb block has considerably lower compressive strength (45 psi), is 15 inches by 22 inches by 66 inches, and is used to simulate the softer, front-end structure of the striking vehicle. The front and rear wheels of the MDB can be turned to accommodate the impact angle specified in amended Standard No. 214.

The following are the inertial properties of the NHTSA MDB in configuration 2 (with two cameras and camera mounts and a light trap vane and ballast reduced). The weight is 3,015 pounds, the track width is 63 inches, and the wheelbase is 102 inches.

The center of gravity is as follows:

X = 44.2 inches rear of front axle
Y = 0.3 inches left of longitudinal center line
Z = 19.7 inches from ground.

The moments of inertia are as follows:

Pitch = 1669 ft-lb-sec^2
Roll = 375 ft-lb-sec^2
Yaw = 1897 ft-lb-sec^2

The drawings and specifications for the MDB, which are incorporated by reference in the final rule, specify the use of Narmco 117 bonding film, or an equivalent, for bonding the honeycomb structure of the MDB. NHTSA understands that Narmco 117 bonding film meets the minimum requirements for Type I, Class 2 adhesives under the Military Specification for Adhesive, Film Form, Metallic Structural Sandwich Construction (MIL–A–25463b, March 31, 1982). Any adhesive which has characteristics equivalent to those of the Narmco 117 bonding film may be used for bonding the honeycomb structure. This would include, but is not necessarily limited to, those adhesives which meet the Type I, Class 2 requirements under the Military Specification.

III. Brief Summary of Comments on Proposed MDB

NHTSA received many comments concerning the MDB. The following briefly summarizes those comments. NHTSA more fully summarizes and responds to the comments later in this notice and in the Final Regulatory Impact Analysis.

A number of commenters advocated the adoption of one of the barriers developed in Europe instead of the NHTSA MDB. Some commenters favored the barrier developed by the European Experimental Vehicle Committee (EEVC), while others favored the barrier developed by the Committee of Common Market Automobile Constructors (CCMC).

A number of commenters suggested a different weight for the MDB. Some commenters thought that the weight should be increased to be more consistent with the weight of the average light truck. Others supported a lower barrier weight, more consistent with the weight of the barriers developed in Europe.

Some commenters suggested a different height for the bumper of the MDB. Some recommended a bumper height similar to that of a light truck.

A number of commenters criticized the dimensions of the MDB's honeycomb face. Some commenters suggested a different width or height above the ground. Others preferred the shape and dimensions of a barrier face developed in Europe.

Some commenters were concerned about the stiffness of the aluminum honeycomb barrier face. Some believed that the barrier was stiffer than the majority of passenger cars and thought that the barrier should be more representative of passenger cars. Others suggested that NHTSA consider a rigid moving barrier. Some commenters also believed that the bumper of the MDB was too stiff.

Some commenters supported a dynamic force-deflection specification for the MDB barrier face. A few commenters stated that the variability of the barrier face stiffness can be significant.

IV. Barrier Weight

NHTSA proposed a side impact compliance test procedure which simulates a typical two-vehicle side impact collision and employs a 3,000 pound MDB as the striking or "bullet" vehicle. As discussed in the proposal, NHTSA set the weight of the barrier to be representative of the weight of future vehicles expected to be involved as the striking vehicle in side impact crashes in the United States. In the proposal, NHTSA stated that in multiple vehicle accidents resulting in serious injuries and fatalities, passenger cars and light/medium/heavy trucks are about equally likely to be the striking vehicle. As stated in the proposal, NHTSA derived the weight of the barrier from the median curb weight of passenger cars (3,127 pounds in 1986) and light trucks (3,813 pounds in 1986). This resulted in a weighted average of 3,423 pounds, which was adjusted downward to account for the projected lower weight of vehicles in the 1990's. Based on these considerations, NHTSA derived a barrier weight of 3,000 pounds,

representing a 2,700 pound vehicle and 300 pounds for passengers and cargo.

NHTSA believes that it is appropriate to use a barrier weight that is based, in part, on the higher weight of light trucks since light trucks are involved as the striking vehicle in a significant percentage of side impact collisions. NHTSA analyzed Fatal Accident Reporting System (FARS) data from 1984 to 1988 for fatal side impact collisions in which a passenger car was the struck vehicle. Based on this analysis, NHTSA determined that collisions involving passenger cars as the striking vehicle type accounted for 47.4 percent of the fatalities, while striking light trucks/vans (LTV's) accounted for 31.3 percent, and striking medium/heavy duty vehicles accounted for 19 percent of the fatalities. In addition, the percentage of fatalities from side impact collisions with an LTV as the striking vehicle has been increasing. The percentage has grown from 29.7 percent of the fatalities in 1984 to 35.5 percent in 1988. Similarly, LTV's as the striking vehicle accounted for 31 percent of the side impact collision injuries classified as Abbreviated Injury Scale (AIS) 3 or greater in 1988. This percentage has increased from 14.7 percent in 1983.

NHTSA received a number of public comments concerning barrier weight, with a number of commenters suggesting a weight different from that proposed. The Center for Auto Safety and Public Citizen suggested increasing the weight of the MDB to 3,500 pounds to be consistent with the higher average light truck weight. Rolls-Royce stated that, if the MDB is intended to represent the aggressiveness of a light truck, a higher weight would be needed. The European Experimental Vehicles Committee (EEVC) supported a lower barrier weight of about 2,425 pounds (1,100 kilograms), closer to the weight of the MDB developed in Europe. The Commission of the European Communities suggested a weight of 950 kilograms (2,095 pounds). Ford stated that the MDB weight should represent the weight of the U.S. vehicle fleet. However, in the interest of harmonization, Ford suggested a compromise weight of 2,425 pounds. The Motor Vehicle Manufacturers Association (MVMA) noted that different barrier weights within the range of 2,000 to 3,000 pounds do not show a significant influence on test results. Jaguar questioned how the mass of the barrier was determined, asking if the average weight of the U.S. passenger car fleet had been weighted for the number of vehicles in the vehicle class. Chrysler stated that it did not object to the 3,000 pound weight.

NHTSA reexamined the barrier weight issue, using R.L. Polk registration data and vehicle test weight information from the New Car Assessment Program (NCAP) from 1979 to 1988. The NCAP data base consists of domestically manufactured, European, and Japanese cars, all of which are sold in the U.S. market and represent potential striking vehicles. NHTSA derived registration-weighted average and median fleet weights for 1988, which are stated below. The weight includes vehicle curb weight, two part 572(B) dummies weighing 164 pounds each, and simulated cargo of 50 to 150 pounds. The average weight of passenger cars was 3,189 pounds, while the median weight was 3,067 pounds. For light trucks, the average weight was 3,858 pounds, while the median weight was 3,791 pounds. For the combined fleet of passenger cars and light trucks, the average weight was 3,317 pounds and the median weight was 3,250 pounds.

NHTSA also examined the individual and combined equivalent test weights of 1989 domestic and imported passenger cars and light trucks used in EPA's fuel economy driving cycle. Equivalent test weight is defined as curb weight plus 300 pounds to account for two occupants and cargo. The average equivalent test weight for various vehicle types in model year 1989 is shown below:

TABLE I

Vehicle type	Average Equivalent test weight
Passenger cars (PC)	3,181 pounds
PC (imports only)	2,889 pounds
Light trucks and vans (LTV)	3,958 pounds
LTV (imports only)	3,452 pounds
PC and LTV	3,423 pounds

Various European commenters expressed concern about the weight of the MDB proposed by NHTSA. The barrier designs of the European Experimental Vehicles Committee (EEVC) and the Committee of Common Market Automobile Constructors (CCMC) weigh about 1,000 pounds less than the MDB proposed by NHTSA. The European barrier is based on European vehicles, which are often smaller and lighter than U.S. vehicles. Thus, the European barrier at 2,095 pounds is not representative of the U.S. passenger car and light truck fleet, which had an average equivalent test weight of about 3,423 pounds in model year 1989.

In the proposal, NHTSA predicted that the average combined weight (curb weight plus 300 pounds) of the passenger car and light truck fleet would be about 3,000 pounds in the mid 1990's. However, the average combined weight of the passenger car and light truck fleet may be higher than this in the mid 1990's. According to EPA figures, the average combined weight of passenger cars and light trucks has stabilized over the last six years at about 3,423 pounds.

After analyzing the comments and the information discussed above, NHTSA concludes that 3,000 pounds is an appropriate weight for the MDB and is representative of the weight of passenger cars and light trucks in the United States fleet. Based on data from NCAP, weighted to reflect registration figures, and 1989 EPA data, weighted to reflect sales, the MDB is six percent lighter than the average passenger car (domestic and imported) and 11 to 14 percent lighter than the average for passenger cars and light trucks combined. If passenger car and light truck weights decline in the future, the MDB weight would be even more representative.

In addition, the difference between a barrier weight of 3,000 pounds and the average combined fleet weight of 3,317 to 3,423 pounds may not be significant. Theoretically, the lighter the striking vehicle, the less the kinetic energy which must be absorbed and the less the momentum that will be transferred to the struck vehicle. These reductions generally result in lower dummy responses and, thus, lower Thoracic Trauma Index (dummy) or TTI(d) values. However, NHTSA examined the sensitivity of side impact dummy responses and TTI(d) to differences in MDB weight for the proposed rule. Comparing the 3,000 pound barrier to an average 3,423 pound weight for the combined passenger car/light truck population, a Department of Transportation computer model (which this notice refers to as the "side impact sensitivity model"), discussed in detail in Section D of the Preliminary Regulatory Impact Analysis, showed that, with a Volkswagen Rabbit as the struck vehicle, rib responses would remain unchanged and the spine and pelvis acceleration responses would be reduced only four percent. Overall, NHTSA expects that the effect on dummy responses of a somewhat lower barrier weight would be negligible.

V. Barrier Shape and Dimensions

The dimensions of the barrier described in the proposal were established using 1979 model year vehicles. The minimum and maximum bumper heights correspond to the sales-weighted median heights for 1979 two-

door sedans. Other barrier dimensions were based on sales-weighted dimensions from the highest sales volume 1979 model passenger cars, the Ford Fairmont, Oldsmobile Cutlass, Chevrolet Citation, and Chevrolet Impala.

Commenters expressed concern about the bumper height, barrier height, and barrier width of the MDB. In the Preliminary Regulatory Impact Analysis, NHTSA stated that these dimensions of the barrier were important because the above ground height and location of the stiffer honeycomb component (the bumper) controls engagement with the door sill of the struck vehicle, the distance below the window opening or barrier height influences the inner and outer door energy absorption and the deflection characteristics needed to lower thorax responses, and the width of the barrier controls front fender and rear quarter panel engagement.

A. Barrier Bumper Height

NHTSA received a number of comments concerning the barrier bumper height. The Insurance Institute for Highway Safety (IIHS), the Center for Auto Safety, and Public Citizen recommended a bumper height similar to that of a light truck. Rolls-Royce stated that if the MDB is as stiff as a light truck, then it should also have a higher bumper height, like a light truck.

The MDB described in the proposal has an upper edge that is 21 inches off the ground and a bottom edge that is 13 inches off the ground. This represents an eight-inch high bumper surface, which protrudes four inches from the barrier face. As mentioned in the proposal, the bumper face vertical height (the distance between the upper and lower bumper edges) ranged from 4.9 to 7.5 inches for the ten best selling passenger car models in 1984.

NHTSA reexamined the bumper height issue in light of several sets of current vehicle bumper height data. In two studies, NHTSA measured the distance from the bottom of the bumper to the ground of (1) 19 popular passenger cars from model years 1976 to 1983 and (2) 12 light trucks from model years 1984 to 1988. For the 19 passenger cars, the average measurements were 14.4 inches from the ground to the bottom of the bumper and 20.7 inches from the ground to the top of the bumper. For the 12 light trucks, the average measurements were 16.7 inches from the ground to the bottom of the bumper and 25.8 inches from the ground to the top of the bumper. This compares to the NHTSA MDB, which measures 13.0 inches to the bottom of the bumper and 21.0 inches to the top of the bumper. Based on this data set, the distance to the top edge of the MDB bumper is consistent with the distance to the top edge of the average passenger car bumper, but lower than the average distance for light truck bumpers by 4.8 inches. Based on the same data set, the lower edge of NHTSA's bumper is 1.4 inches lower than the average for passenger cars and 2.7 inches lower than the average for light trucks.

The average vertical height of the NHTSA MDB bumper is 8.0 inches, which compares to an average vertical height of 6.1 inches for the 19 passenger cars and 9.1 inches for the 12 light trucks. Based on this data set, the vertical height of the MDB bumper is within the range of popular passenger cars and light trucks.

In addition, NHTSA examined a sample of 36 popular 1987 passenger cars and light trucks and found an average height of 20.8 inches to the top of the bumper. This is consistent with the upper-edge height of the MDB bumper (21.0 inches). NHTSA believes that a larger sample would yield the same results since the Bumper Standard (49 CFR part 581) specifies a 16, to 20, inch vertical impact position for the pendulum impact strength test for passenger cars.

NHTSA concludes that the upper edge distance of the proposed MDB bumper is consistent with the vehicle population it is intended to represent. NHTSA acknowledges that the vertical height of the MDB bumper may be two to three inches greater than that of the bumper on a typical passenger car. However, NHTSA believes that this is necessary to represent the range of bumper-to-side-structure engagement. NHTSA believes that the MDB bumper will engage the sill and reinforcing structure of a struck vehicle in the same manner as the bumper of a typical striking passenger car or light truck, even if the MDB bumper has a slightly greater vertical height (i.e., the width of the bumper is slightly greater) than the bumper of a typical passenger car or light truck. Damage patterns of the sills in vehicles struck by the NHTSA MDB are similar to those observed in actual side impact crashes.

B. Barrier Height and Width

A number of commenters criticized the dimensions of the MDB's honeycomb face. For example, comments addressed its overall width and height above the ground. General Motors (GM) claimed that the barrier height specifications were ambiguous. The commenter stated that the four specified dimensions cannot be achieved simultaneously because of build tolerance in the barrier face and its attachment. The Commission of the European Communities (CEC) disagreed with the shape and dimensions of the barrier face. The International Standards Organization (ISO) preferred the shape and dimensions of the EEVC barrier face as being more representative of the average front-end size of world passenger cars. The EEVC stated that it would be easier to meet the requirements of the revised Standard No. 214 with the proposed MDB than with the EEVC barrier, because the stronger parts of the car (e.g., pillars) would be struck by the proposed MDB's barrier face. They stated that this would be because the EEVC barrier is not as wide and they were concerned that the EEVC barrier would result in a more severe test, especially with a more rearward positioned point of impact compared to that proposed by NHTSA. The Japanese Automobile Standards Internationalization Center (JASIC) stated that the barrier face should represent the average dimensions of cars throughout the world. The U.S. Technical Research Company, representing Peugeot and Citroen, was concerned that the barrier face geometry did not represent the front face of a light truck.

In response to GM's comment, NHTSA added more information concerning specifications. NHTSA notes that several MDB's have been built and tested by manufacturers and testing organizations without apparent difficulties.

NHTSA believes that the MDB should be representative of cars and light trucks in the United States, rather than of world passenger cars. Since the MDB is designed to represent the striking vehicle in a side impact collision in the United States, it is appropriate for it to represent the vehicles likely to be involved in such crashes in the United States.

NHTSA analyzed whether the MDB dimensions are representative of passenger cars and light trucks in the United States. NHTSA compared the width and height of the MDB to the width and height of passenger cars and light trucks. NHTSA used bumper width measurements from NCAP test vehicles from 1979 to 1988 to reexamine the barrier width issue. The data were weighted to represent 1988 vehicle registrations. NHTSA found that passenger cars had a weighted average width of 67.0 inches and a median width of 66.6 inches. Light trucks had a weighted average width of 71.8 inches and a median width of 70.4 inches. For passenger cars and light trucks

combined, the weighted average width was 67.6 inches and the median width was 66.8 inches. This is nearly identical to the NHTSA barrier face width of 66 inches.

NHTSA also compared the height of the MDB to the height of passenger cars and light trucks. NHTSA compared the distance from the top edge of the barrier to the ground, to the distance from the upper hood edge to the ground, in a sample of 36 popular passenger cars and light trucks selected to be representative of 1987 model year passenger cars and light trucks in the United States. In this sample, the upper hood edge averaged 32.2 inches from the ground. The sales weighted average for the upper hood edge height was 33.2 inches. This is nearly identical to the MDB distance of 33 inches.

Based on the above data, NHTSA concludes that the barrier height and width are representative of the average combined passenger car and light truck population. NHTSA further concludes that it is appropriate for the barrier height and width to represent the combined passenger car and light truck population since light trucks are the striking vehicle in a large percentage of side impact collisions.

VI. Barrier Stiffness

The MDB described in the proposal was designed to have the stiffness or crush characteristics of a 1981 Chevrolet Citation striking another vehicle in the side at an angle of 60 degrees. The stiffness or crush characteristics of the MDB are controlled by two aluminum honeycomb blocks. As stated in the preamble to the proposal, these blocks give the MDB an average stiffness of about 10,000 pounds per inch of deflection for a large magnitude of crush at a 90 degree impact angle. NHTSA acknowledged in the proposal that this value is at the upper end of the passenger vehicle scale. However, many light trucks, which represent a significant portion of the striking vehicle population, are in this range of stiffness. In the proposal, NHTSA tentatively concluded that the MDB front face stiffness should be higher than the stiffness of typical passenger car front structures and more like the stiffness of light trucks. This was because light/medium/heavy trucks, as striking vehicles, are responsible for nearly as many serious injuries and fatalities as are passenger cars. NHTSA received many comments concerning barrier stiffness.

A. Overall Barrier Face Stiffness

Many commenters were concerned about the stiffness of the aluminum honeycomb barrier face. Their primary criticism was that the MDB face is too stiff. General Motors commented that a barrier face which is stiffer than the typical car or light truck will result in different interactions with the test vehicles. As an example, GM stated that the deformation of the barrier has been less than five inches in full scale tests conducted by GM. According to GM, this indicates that the purpose of having a deformable barrier is compromised. GM also stated that twice the energy is required to deform the MDB five inches than to deform the GM Astro, the GM Blazer, or the Mazda B–2000 the same amount. According to GM, this is because the MDB is much stiffer than those vehicles during the first five inches of crush. GM also stated that the NHTSA MDB was stiffer than the GM Oldsmobile Delta 88. GM asserted that further work is necessary to make the barrier more representative. Toyota stated that the proposed barrier exceeded the stiffness of full size cars and trucks. Nissan and Porsche also stated that the MDB is too stiff.

Many commenters stated that the stiffness of the barrier should be like that of a passenger car, not that of a light truck. Some commenters stated that the barrier was stiffer than the majority of passenger cars. The Automobile Importers of America (AIA) stated that the barrier should represent the world passenger car fleet. Nissan, the Japanese Automobile Manufacturers Association (JAMA), and Austin-Rover encouraged NHTSA to consider a rigid moving barrier.

GM was the only commenter to submit data generated at its own test facilities concerning barrier stiffness. GM performed 30 mph frontal rigid barrier impact tests and submitted force-deflection curves that it asserted showed that the proposed NHTSA MDB face is stiffer than the front end of the Oldsmobile Delta–88.

In view of these comments, NHTSA reexamined barrier stiffness. In the Final Regulatory Impact Analysis, NHTSA compares the average frontal stiffness (i.e., the average of the stiffness measured over 10 to 12 inches of displacement) and initial frontal stiffness (i.e., stiffness measured during the first five inches of displacement) of the MDB with that of a selected set of passenger cars and light trucks assessed under the agency's New Car Assessment Program (NCAP). NHTSA also examined the front-end stiffness estimates (using NCAP data) at 4, 6, and 8 inches of displacement for a larger set of passenger cars and light trucks provided by CCMC and JAMA in their comments. The frontal stiffness measurements and estimates were based on fixed rigid barrier tests. For the makes and models analyzed, the MDB average stiffness is greater than that of the average passenger car, but less than that of the average light truck. The initial MDB stiffness is greater than that of both the average passenger car and the average light truck.

As explained in the Final Regulatory Impact Analysis, NHTSA also reexamined barrier stiffness using the root-energy method employed in the damage algorithm in the CRASH3 accident reconstruction model. The modeling shows that the stiffness of the proposed MDB is 45 percent greater than the mean passenger car stiffness and 17 percent greater than the mean LTV stiffness. NHTSA discusses this modeling data in further detail in the Final Regulatory Impact Analysis.

NHTSA agrees that the initial stiffness (i.e., average stiffness during the first five inches of displacement) of the MDB is greater than that of a Chevy Astro, a Chevy Blazer, a Mazda B–2000, or an Oldsmobile Delta 88. However, neither the barrier nor striking vehicles have a constant frontal stiffness. In addition, the frontal stiffness does not change in a linear fashion. When average stiffness is derived from the actual force-deflection curve (which is non-linear) over a 10 to 12 inch crush distance, the first three vehicles are as stiff or stiffer than the NHTSA MDB.

While the MDB has greater initial frontal stiffness than the average car or light truck when measured in a fixed rigid barrier test, NHTSA does not believe that the MDB will always produce higher occupant injury responses in crash tests than passenger cars or light trucks with lesser stiffness. NHTSA believes that this will depend upon the relative stiffness of the struck vehicle. The Department of Transportation side impact sensitivity model predicts that the higher stiffness of NHTSA's MDB may produce TTI(d) responses up to 25 percent higher in certain test vehicles. However, as explained in the Final Regulatory Impact Analysis, NHTSA believes that the side impact sensitivity model has limitations and, therefore, should only be used to investigate general trends of dummy responses rather than to make precise predictions of those responses.

Therefore, NHTSA also analyzed experimental and empirical data to study the impact of the stiffness of the MDB. First, photographs and slides from accident investigation reports show that the front-ends of striking vehicles in side impact collisions do not crush or absorb a great deal of energy. Nearly all of the

kinetic energy of the striking vehicle is generally absorbed in the side of the struck vehicle. The NHTSA MDB behaves similarly, yielding very little and absorbing only four to five percent of the crash energy.

Second, Transport Canada conducted a series of side impact crash tests using Chevrolet Cavaliers as the struck vehicle to examine and compare the proposed NHTSA and European side impact test procedures. One test by Transport Canada was car-to-car. where the striker was a 1988 Ford Taurus (weighing 3,003 pounds and crabbed at 26 degrees) and the struck vehicle was a Cavalier. NHTSA plotted the Cavalier's side deformation (plan or top view) caused by NHTSA's proposed MDB and compared it to the deformation caused by the Ford Taurus at five different levels (i.e., low door sill, occupant H-point, mid-door height, window sill, and top of the window opening). NHTSA found that they were very similar. These data demonstrate the comparability of the Taurus front-end and the MDB with respect to aggressiveness and stiffness. (As used here, aggressiveness describes the amount of deformation or damage caused by the striking vehicle in the side of the struck vehicle. Aggressiveness is also associated with stiffness, i.e., something that is stiffer is also more aggressive.) The nearly congruent deformation patterns in the Cavalier show that the MDB and the Taurus absorbed about equal amounts of energy. In addition, the front-end of the Ford Taurus showed very little damage, similar to the MDB face.

In view of this empirical data, NHTSA questions the relevancy of frontal stiffness data derived from fixed rigid barrier tests to the frontal stiffness of a striking vehicle in a side impact crash. Relative to the side of a passenger car, front-ends of a striking vehicle (both passenger cars and LTV's) are very aggressive, deform very little, and absorb very little energy. In short, the front-ends of striking vehicles are much stiffer than the sides of struck vehicles.

NHTSA agrees with Ford that the MDB crushes very little in a full scale side impact crash. However, as discussed above, a striking vehicle in a side impact crash also crushes very little.

GM stated that the NHTSA MDB is stiffer than an Oldsmobile Delta–88 and is not representative of typical passenger car frontal stiffness. NHTSA agrees that the NHTSA MDB is stiffer than the average frontal stiffness of a passenger car, measured using a fixed rigid barrier. However, NHTSA believes that this measure of frontal stiffness is not relevant to frontal stiffness in a side impact, where little front-end crush occurs in a striking vehicle. In addition, NHTSA believes that it is somewhat academic whether the proposed NHTSA MDB is stiffer than the Oldsmobile Delta–88. NHTSA believes that the important issue is the relative stiffness of the NHTSA MDB and the front structures of striking vehicles compared to that of struck vehicle side structures. The NHTSA MDB and the front structures of passenger cars and light trucks are all significantly stiffer than the side structure of a struck vehicle. The NHTSA MDB, while having greater frontal stiffness in a fixed rigid barrier test, behaves very much like the front-end of a striking car or light truck in a side impact crash environment.

Many commenters stated that the MDB should be softer. The commenters generally believed that the softer barrier would produce less severe results in a crash test. Based on analysis of test data, NHTSA does not agree with the commenters. First, as part of its research and development program, NHTSA examined the influence of a softer (25 psi) honeycomb barrier face. NHTSA tested the 25 psi honeycomb along with the 45 psi honeycomb specified for the MDB in side impact tests with Volkswagen Rabbits. The agency concluded from these experimental tests that a significant reduction in barrier stiffness would not significantly change occupant injury probability.

Second, Transport Canada compared the softer and lighter EEVC barrier with the proposed NHTSA barrier in tests using the EuroSID dummy. Transport Canada tested the two barriers with 1988 models of the Chevrolet Cavalier, Pontiac Bonneville, and Hyundai Excel. For these vehicles, the EEVC barrier produced EuroSID responses ranging from 39 to 46 percent higher than those produced by the NHTSA MDB. However, the MVMA also conducted tests with a Ford LTD to compare the NHTSA MDB to the EEVC barrier. These tests demonstrated no difference in responses between the two barriers.

The Transport Canada data, with a higher occupant response with the softer and lighter EEVC barrier face, is contrary to what was predicted by the Department of Transportation's side impact sensitivity model, NHTSA notes that the EEVC barrier tests were run by Transport Canada in the uncrabbed mode. NHTSA is further investigating why the softer and lighter EEVC barrier produced higher occupant responses than the NHTSA MDB in the Transport Canada tests. NHTSA discusses various theories for this in the Final Regulatory Impact Analysis.

NHTSA has also considered comments advocating a rigid moving barrier. NHTSA acknowledges that there would be cost savings with such a barrier, since persons would not have to replace the honeycomb barrier face after each test. However, NHTSA believes that a rigid moving barrier would increase the stringency of the test procedure and result in higher occupant responses as measured by TTI(d). Further, NHTSA believes that a moving rigid barrier would not be representative of actual crash environments. First, the rigid moving barrier would not absorb any energy in a crash and the struck vehicle would, therefore, experience higher side intrusion. Second, in a crash test, the interaction between the occupant and the inner-door might be different because of the greater side intrusion with a rigid moving barrier. In addition, NHTSA believes that a rigid moving barrier would be much stiffer than the MDB. As discussed above, NHTSA received comments complaining about the alleged excessive stiffness of the MDB.

NHTSA concludes that the stiffness of the proposed MDB is appropriate for the final rule. While the MDB is stiffer than the average passenger car or light truck, as measured in a fixed frontal barrier test, NHTSA believes that there are significant differences between the barrier test and the side impact crash environment. Volvo recognized this in its comments where it stated that "all these judgments are based on front characteristics measured against a flat fixed barrier. Thus they have limited validity regarding side impact against a car."

In a side impact crash, the front-end of the striking vehicle absorbs very little energy and crushes very little because of its greater relative stiffness compared to the side of the struck vehicle. The NHTSA MDB behaves similarly. The aggressiveness of the MDB was close to the aggressiveness of the Ford Taurus, a popular mid-size passenger car, in the Transport Canada side impact tests using a Chevrolet Cavalier as the struck vehicle. While the NHTSA MDB has a higher frontal stiffness than the Ford Taurus, when measured in a fixed rigid barrier test, both were equally aggressive and created the same deformation pattern in tests with the Cavalier. In addition, the NHTSA MDB produced lower occupant responses in the Cavalier (with the EuroSID dummy) in the Transport Canada tests than did the Ford Taurus. On the basis of the empirical tests discussed above and the above analysis, NHTSA concludes that the MDB face stiffness is reasonable.

B. Bumper Stiffness

NHTSA received a number of comments concerning the stiffness of the MDB bumper. The EEVC stated that requiring tests with the bumper simulation on the proposed barrier face could lead to the wrong car modifications. Ford suggested softening the bumper on the proposed NHTSA barrier face to make it more car-like. Porsche stated that the barrier is too stiff, especially the bumper.

The MDB bumper is constructed of a 245 psi crush strength aluminum honeycomb designed to simulate the stiffness of the hard points in the front structure of a striking vehicle, i.e., the frame rails and engine, planing laterally across the side of the struck vehicle. Thus, the MDB bumper is highly aggressive and does not undergo a great deal of yielding during a crash. This is similar to the front structure of an automobile or light truck in a side impact collision. NHTSA has found that the localized regions of a vehicle's front structure appear to be the dominant factor in the deformation patterns observed on the sides of struck vehicles in actual crashes. These regions are generally associated with the frame rails and the engine. As shown above, the NHTSA MDB, as a whole, behaves like a typical passenger car or light truck striking vehicle in a side impact crash. The barrier face loads the struck vehicle in much the same way that a typical passenger car or light truck would. For the above reasons, NHTSA believes that the stiffness of the MDB bumper is appropriate and that tests using the MDB bumper will properly assess side impact crash protection.

C. Dynamic vs. Static Barrier Face Properties

NHTSA received a number of comments supporting a dynamic force-deflection specification for the MDB barrier face. The proposed rule provided only static crush characteristics of the aluminum honeycomb (45 plus or minus 2.5 psi and 245 plus or minus 15 psi). Nissan commented that the dynamic performance characteristics of the barrier face need to be specified. According to Nissan, specifying the characteristics rather than a type of material would allow a manufacturer to use cost-effective materials in the barrier face. Toyota stated that a honeycomb face produced in Japan to NHTSA's specified static properties differed in dynamic characteristics. It further stated that the energy absorbing material used for a honeycomb face should be specified by dynamic characteristics. The Japanese Automobile Standards Internationalization Center (JASIC) urged that the energy absorbing performance of the barrier face material be stipulated in terms of its characteristics, rather than the type of material (i.e., they requested that NHTSA establish a dynamic certification test). Ford was concerned that the barrier face specifications do not apply to the initial and highest force levels found in crushing the barrier face (i.e., the static crush specification does not establish initial and highest force levels.

NHTSA does not believe that it is necessary to specify the dynamic crush characteristics, including the initial and the highest force levels, of the honeycomb in this rule. NHTSA already specifies the static properties of the barrier. In addition, dynamic force measurements are not as accurate as static measurements. NHTSA believes that it would be both costly and time consuming to develop dynamic certification tests for the MDB faces. Further, this type of certification would have low practicality and questionable effectiveness, since it would require the destruction of the MDB face being certified.

NHTSA acknowledges that a benefit of specifying dynamic crush characteristics would be to allow manufacturers to use alternative materials (e.g., a foam face) for the honeycomb if they are within the dynamic specifications. However, NHTSA has not identified any material other than the aluminum honeycomb that gives consistent performance.

NHTSA believes that it is most appropriate to specify the static crush characteristics since they can be measured more precisely than the dynamic properties. The side impact test procedure already defines a method for certification of the 45 psi aluminum honeycomb material's static properties so that the crash test results are repeatable. See Aluminum Honeycomb Crush Strength Certification Procedures. Essentially, three samples of aluminum honeycomb material (six inches by six inches by one inch) are cut and crush tested at a rate of 0.20 inches per minute. Measurements of load and deflection are made at three sections between 0.25 inches and 0.65 inches of the one inch sample. The range of acceptability is 42.5 to 47.5 psi. NHTSA has not developed a certification procedure for the 245 psi bumper honeycomb material because the bumper is a flexion member which develops its strength based on the material properties of the front and back aluminum plates that sandwich the honeycomb. NHTSA believes that its design specifications for the bumper and specifications of bumper crush strength are adequate to assure MDB repeatability.

Further, test data indicate that the NHTSA test procedure provides acceptable dynamic repeatability even though the dynamic characteristics of the honeycomb barrier face are not specified. NHTSA conducted load cell barrier tests on three samples of aluminum honeycomb barrier face material. The three resultant test results indicate excellent dynamic repeatability. The dynamic force deflection curves, which show the dynamic repeatability, are provided in the Final Regulatory Impact Analysis. Further, as discussed more fully in the Final Regulatory Impact Analysis, the side-impact test procedure has acceptable repeatability. The variability found in the testing comes from a number of sources (e.g., the test dummy, the test site, the test procedure, and the test vehicle). Since the dynamic variability of the aluminum honeycomb is but a small part of the overall test procedure variability and since the overall variability is acceptable, NHTSA concludes that the dynamic variability of the honeycomb is acceptable. Since the MDB requirements provide repeatable test results, NHTSA does not believe that the additional expenditures of time and money for dynamic certification tests are necessary.

VII. Barrier Face Variability

NHTSA received a number of comments concerning barrier face stiffness variability. GM stated that the variability of the aluminum honeycomb stiffness can be significant. In its comments, Ford attributed test result variability to manufacturing variations in the aluminum honeycomb material. Ford tested undeformed portions of several barrier faces that had been used in crash tests. Although the faces all were certified by the manufacturers as meeting NHTSA's proposed force-deflection specification, Ford stated that the stiffnesses varied widely and many of the barrier faces fell outside the NHTSA specification. Ford also commented that, in a test it conducted, the initial stiffness of the barrier was four times higher than stated in the proposal and that the honeycomb crush distance was very small (i.e., less than two inches). Chrysler stated that, in a test it conducted, the stiffness of the proposed barrier exceeded the 10,000 pounds per inch design target.

NHTSA tested samples of the 45 psi honeycomb material at the NHTSA Vehicle Research and Test Center (VRTC) following the specified procedure. NHTSA found that the different samples of the material performed in a very similar way and were well within the proposed specifications. While the permitted variation is 45 psi plus or minus 2.5 psi (5.55 percent), the variation in the sample was 46.6 psi plus or minus 0.75 percent. This is well within the acceptable range of 42.5 to 47.5 psi specified by NHTSA. Further details concerning these tests and a table of test results are provided in the Final Regulatory Impact Analysis.

Discussions that NHTSA personnel had with Ford personnel indicated that Ford was not cutting the sample of material correctly. Ford's cutting procedure was causing crush damage to the thin honeycomb wall of the samples, which introduced variability. As a result of this, NHTSA has added blade and cutting specifications to the above procedure.

Ford and Chrysler's comments that their measurements of the initial stiffness of the MDB differ from NHTSA's measurements can in part be explained by the difficulty of measuring dynamic force and deflection. It is more difficult to measure crush characteristics (i.e., force and deflection) dynamically than statically. As discussed above, NHTSA has adopted a static crush test methodology, rather than a dynamic certification test, for certification of the honeycomb barrier face material. Further, as discussed in the main side impact notice, NHTSA is satisfied with the overall side impact test procedure variability and believes that the dynamic variability of the honeycomb material has a small effect on overall variability.

NHTSA has also reviewed GM's assertion that honeycomb variability can be significant. NHTSA notes that GM only stated the permissible tolerances specified by NHTSA rather than presenting test data. NHTSA believes that the range of tolerance must be allowed in the specifications if the honeycomb is to be manufactured at a reasonable cost. Further, with the current tolerance specifications, the barrier produces consistent test results. In the test discussed previously, NHTSA selected three samples of aluminum honeycomb barrier face material and conducted load cell barrier tests at 14.7 miles per hour (mph), with a crabbed impact angle of 19 degrees. NHTSA recognizes that these conditions were not identical to those in the side impact test procedure. However, the three test results indicate acceptable dynamic repeatability. The dynamic force deflection curves, which show the dynamic variability, are provided in the Final Regulatory Impact Analysis. NHTSA does not believe that the permissible tolerances will cause noticeable differences in test results.

VIII. Inertial and Dynamic Properties

NHTSA received one comment concerning the inertial and dynamic properties of the MDB described in the proposal. GM stated that the center of gravity and the front-to-rear mass ratio of the barrier were not specified in the NPRM. GM stated that these inertial properties of the barrier are needed because they affect how the barrier rotates and, therefore, how the struck vehicle is crushed. NHTSA has included information concerning the center of gravity coordinates and the inertial properties of the MDB in the regulatory text. Information concerning the barrier's inertial properties may also be found in Unit II of this preamble and in the Final Regulatory Impact Analysis.

While the MDB's center of gravity coordinates and inertial properties were not specified in the NPRM, that information is listed in a document added to the public docket during the comment period in July, 1988 (Docket item 88–06–NOI–013). All information relating to inertial properties is either provided in the public docket submission or can be calculated from the data provided in the document. The weight, wheelbase, location of the center of gravity, pitch, roll, and yaw moments of inertia are specified in the document. The front-to-rear mass ratio can be calculated from the data concerning center of gravity and weight provided in the public docket submission.

It is important to note that GM did not claim that the inertial properties of the NHTSA MDB were not representative, only that they were not specified in the NPRM. However, NHTSA compared the inertial properties of the barrier (with and without camera equipment) to an aggregate sample of 50 passenger cars and 82 light trucks. The sample, while dominated by later model years, represents a cross section of vehicles manufactured and sold during the 1980's. As shown in the Final Regulatory Impact Analysis, the inertial properties of the NHTSA MDB are all reasonably close to the average inertial properties of the combined sample of 132 passenger cars and light trucks.

IX. Alternative Side Impact Barriers

The proposed rule and the Preliminary Regulatory Impact Analysis discussed barriers developed by the Committee of Common Market Automobile Constructors (CCMC) and the European Experimental Vehicles Committee (EEVC). NHTSA stated in the proposed rule that it was concerned about using either of those barriers because they did not appear to be representative of the striking vehicles in side impact crashes in the United States. The NHTSA MDB is about 50 percent heavier and has a larger barrier face than the European ones. The European barriers appear to be more representative of the lighter and smaller European and Japanese passenger cars. In addition, the NHTSA barrier is made of different material and has a stiffer face than those proposed in Europe.

The NHTSA test procedure, using the NHTSA MDB, delivers about 113,000 foot-pounds of energy, compared with the European procedure, which delivers only 62,980 foot-pounds of energy. NHTSA estimates that only about four to five percent of this crash energy is absorbed by the NHTSA MDB, whereas the EEVC barrier face appears to disintegrate, making estimates of crash energy absorption impossible. The NHTSA, CCMC, and EEVC barriers all must be replaced after each test. A more detailed comparison of the NHTSA MDB with the CCMC and EEVC barriers is contained in the Final Regulatory Impact Analysis.

NHTSA received comments advocating the use of one of the European barriers. The Commission of the European Communities favored the barrier face and barrier front stiffness of the EEVC barrier. Volvo stated that the CCMC barrier, with minor modifications, would have the best characteristics to simulate a car-to-car impact. MVMA stated that the EEVC barrier face should be adopted because it is more representative of the average front-end stiffness characteristics and size of world passenger cars. Austin Rover also stated that the EEVC barrier is more representative of actual world cars. USTRC stated that the different results obtained for the CCMC barrier compared to the NHTSA barrier show that the NHTSA MDB is not representative. The EEVC was concerned that the NHTSA barrier face, made of aluminum, will cost four times as much as the European barrier face, which is made of polyurethane. These comments were generally addressed in prior units of this preamble, but will be addressed further below.

NHTSA has reviewed the results of side impacts tests using both the EEVC barrier and the NHTSA barrier. The 2,095 pound EEVC barrier was tested by Transport Canada using the EEVC urethane foam barrier face and the European test procedure of a 90-degree impact angle and the EuroSID dummy. The NHTSA barrier was also tested using the EuroSID dummy. When both barriers were tested with a Chevrolet Cavalier as the struck vehicle, TTI(d) values were 46 percent higher for the EEVC barrier than for the NHTSA barrier. When both barriers were tested with a Hyundai Excel and a Pontiac Bonneville as struck vehicles, and the EuroSID dummy, the Transport Canada tests found TTI(d) values to be 39 percent higher in each case for the EEVC barrier compared to the NHTSA MDB.

These results are not consistent with more recent tests by MVMA. In these tests. MVMA compares the EEVC barrier and procedure to the NHTSA barrier and procedure using the EuroSID dummy and a Ford LTD as the struck vehicle. NHTSA discusses these tests in more detail in the Final Regulatory Impact Analysis.

The results of the Transport Canada tests, where the higher occupant response (as measured with TTI(d) and pelvic g's) was with the softer and lighter EEVC barrier face, are contrary to what was predicted by the Department of Transportation's side impact sensitivity model. NHTSA is further investigating why the softer and lighter EEVC barrier produced higher occupant responses than the NHTSA MDB in the Transport Canada tests. NHTSA discusses various theories for this in the Final Regulatory Impact Analysis.

NHTSA also studied the variability of the European side impact test procedure, with the EEVC barrier face and the EuroSID dummy, using data generated by MVMA. NHTSA compared the results to the results of the tests MVMA conducted using NHTSA's test procedure (including the SID dummy). The variability comparisons between the test procedures are shown in the table below.

TABLE II.—TEST PROCEDURE VARIABILITY RANGE COMPARISON

[In percent]

	U.S./NHTSA (CV) [1]	European/ EEVC (CV) [2]
1. Baseline, No Padding	±2.34 to 7.55	±0.8 to 7.1
2. Baseline, w/ Padding	±2.62 to 7.07	±3.9 to 10.8
3. Modif. Struct., No Padding	±0.58 to 9.39	±1.3 to 11.2
4. Modif. Struct., w/ Padding	±0.81 to 5.00	±0.1 to 7.4

[1] MVMA n=16
[2] MVMA n= 8

Based on these results, NHTSA concludes that the variability of the European side impact test procedure based on a 90 degree impact angle, EuroSID, and the EEVC barrier is slightly greater than NHTSA's crabbed side impact test procedure using the NHTSA MDB and the SID. Some of the difference in variability of the procedures may be attributed to the differences between the EuroSID and the SID dummies as well as differences in variability of the deformable barrier faces.

Concerning the comment about the cost of the NHTSA barrier face, NHTSA acknowledges that assembled barrier faces are currently available only from Hexcel Corporation at a cost of about $1,700 each, if purchased in quantity. NHTSA also acknowledges that the barrier faces must be replaced after each test. However, NHTSA has not identified any other barrier face material that gives consistent performance in crash tests.

As discussed in earlier units of this preamble, NHTSA believes that the NHTSA MDB is sufficiently representative (in terms of weight, dimensions, inertia, and stiffness) of passenger cars and light trucks that are likely to be the striking vehicle in side impact collisions in the United States. NHTSA also believes that it is appropriate that the MDB be representative of such vehicles rather than representative of vehicles used in other nations. NHTSA further believes that the European barriers, because of their light weight, are not representative of vehicles in the United States. In addition, NHTSA would be reluctant to adopt the EEVC barrier as a compliance testing device because of its inconsistent behavior in the Transport Canada tests.

X. Conclusions Concerning the NHTSA MDB

Based on the above discussion, NHTSA concludes that the NHTSA MDB is representative of the average passenger car and LTV population in the United States. NHTSA also concludes that it is appropriate for the NHTSA MDB to be representative of both the passenger car and LTV population in the United States. As discussed above and in the Final Regulatory Impact Analysis. LTV sales have increased dramatically in the last ten years and LTV registrations are increasing as a percentage of total light vehicle registrations. LTV's, as the striking vehicle, accounted for over 35 percent of side impact collision fatalities and for over 30 percent of the side impact collision injuries classified as AIS 3 or greater in 1988. Further, NHTSA has shown above that the MDB weight and stiffness do not make the test procedure more stringent than appropriate to simulate the impact of a striking passenger car or LTV. In addition, NHTSA has shown that the dimensions of the MDB correspond to average specifications for the combined passenger car and LTV fleet. Finally, NHTSA concludes that the NHTSA barrier is superior to the CCMC and EEVC barriers for purposes of this rule. The NHTSA MDB is more representative of the striking vehicles in side impact collisions in the United States.

XI. Regulatory Impacts

A. Executive Order 12291

As indicated earlier in this preamble, this rule supplements a separate final rule establishing new dynamic test procedures and performance requirements for side impact under Standard No. 214. This rule concerning the MDB is part of that rulemaking. As such, it is considered a major rule within the meaning of Executive Order 12291. It also is considered to be significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has prepared a Final Regulatory Impact Analysis, which describes the economic and other effects of the entire rulemaking. The analysis is available in the docket for the side impact rulemaking. NHTSA estimates that the MDB specified by this rule will cost about $26,200. The barrier frame itself will last indefinitely. The expendable aluminum honeycomb face and bumper, which must be replaced after each test, costs about $1,700 per unit, if purchased in quantities of 60 or more. NHTSA expects that about 20 manufacturers will purchase MDB's, at a total cost of about $558,000.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking under the

Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Therefore, NHTSA has not prepared a regulatory flexibility analysis.

First, few, if any, passenger car manufacturers are considered small entities. Second, small organizations or governmental units will not likely be significantly affected. Any price increases associated with this final rule will be modest and should not affect the purchasing of new cars by these entities. Accordingly, no regulatory flexibility analysis has been prepared. The impact of the rest of the side impact rulemaking is discussed in other notices.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this final rule. The agency has determined that the final rule will not have a significant impact on the quality of the human environment. NHTSA does not believe that production of the MDB involves processes that are particularly harmful to the environment. In addition, the agency believes that the aluminum parts of the barrier can be recycled.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 587

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, chapter V, title 49, Transportation, the Code of Federal Regulations is amended by adding a new Part 587 to read as follows:

PART 587–SIDE IMPACT MOVING DEFORMABLE BARRIER

Sec.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 587.1 Scope.

This part describes the moving deformable barrier that is to be used for testing compliance of motor vehicles with motor vehicle safety standards.

§ 587.2 Purpose.

The design and performance criteria specified in this part are intended to describe measuring tools with sufficient precision to give repetitive and correlative results under similar test conditions and to reflect adequately the protective performance of a motor vehicle or item of motor vehicle equipment with respect to human occupants

§ 587.3 Applicability.

This part does not in itself impose duties or liabilities on any person. It is a description of tools that measure the performance of occupant protections systems required by the safety standards that incorporate it. It is designed to be referenced by, and become a part of, the test procedures specified in motor vehicle safety standards, such as Standard No. 214, *Side Impact Protection.*

§ 587.4 Definitions.

All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

§ 587.5 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. A notice of any change will be published in the Federal Register. As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The drawings and specifications incorporated in this part by reference are available for examination in the general reference section of Docket 79–04, Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street, NW., Washington, DC 20005, telephone (202) 628–6667 or (202) 408–8789. The drawings and specifications are also on file in the reference library of the Office of the Federal Register, National Archives and Records Administration, Washington, D.C.

§ 587.6 General description.

(a) The moving deformable barrier consists of component parts and component assemblies which are described in drawings and specifications that are set forth in this § 587.6 of this chapter (incorporated by reference; see § 587.5).

(b) The moving deformable barrier specifications are provided in the drawings shown in DSL–1278 through DSL–1287, except DSL–1282 (DSL–1278 through DSL–1287, except for DSL–1282, are incorporated by reference; see § 587.5)

(1) The specifications for the final assembly of the moving deformable barrier are provided in the drawings shown in DSL–1281, dated August 20, 1980.

(2) The specifications for the frame assembly of the moving deformable barrier are provided in the drawings shown in DSL–1281, dated August 20, 1980.

(3) The specifications for the face of the moving deformable barrier are provided in the drawings shown in DSL–1285 and DSL 1286, both dated August 20, 1980.

(4) The specifications for the ballast installation and details concerning the ballast plate are provided in drawings shown in DSL–1279 and DSL–1280, both dated August 20, 1980.

(5) The specifications for the hub assembly and details concerning the brake are provided in drawings shown in DSL–1283, dated August 20, 1980.

(6) The specifications for the rear guide assembly are provided in drawings shown in DSL–1284, dated August 20, 1980.

(7) The specifications for the research axle assembly are provided in drawings shown in DSL–1287, dated November 26, 1980.

(c) In configuration 2 (with two cameras and camera mounts, a light trap vane, and ballast reduced), the moving deformable barrier, including the impact surface, supporting structure, and carriage, weighs 3,015 pounds, has a track width of 63 inches, and a wheelbase of 102 inches.

(d) In configuration 2, the moving deformable barrier has the following center of gravity:

X = 44.2 inches rear of front axle
Y = 0.3 inches left of longitudinal center line

Z = 19.7 inches from ground.

(e) The moving deformable barrier has the following moment of inertia:

Pitch = 1669 ft-lb-sec ^{2}
Roll = 375 ft-lb-sec ^{2}
Yaw = 1897 ft-lb-sec ^{2}

Issued on October 24, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-25392 Filed 10-24-90; 11:15 am]

BILLING CODE 4910-59-M

federal register

Tuesday
October 30, 1990

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N-0200]

RIN 0905-AA06

Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking requiring a warning in the labeling of all over-the-counter (OTC) drug products containing as active ingredients water-soluble gums, e.g., guar gum, karaya gum, plantago seed (psyllium), tragacanth, and xanthan gum. This warning would alert users of these products to consume adequate fluid and to avoid using such products if the person has previously experienced any difficulty in swallowing. FDA is issuing this notice of proposed rulemaking after receiving reports of esophageal obstruction and asphyxiation involving OTC drug products containing water-soluble gums as active ingredients. Water-soluble gums are used primarily in OTC laxative and weight control drug products. These ingredients are under review in the ongoing rulemakings for OTC laxative and weight control drug products as part of FDA's OTC drug review. FDA has determined that implementation of a warning for these ingredients should not await completion of the OTC drug review process. Therefore, a warning is being proposed now to support the safe use of OTC drug products containing water-soluble gums. The proposed warning will be incorporated into the pertinent OTC drug monographs as the rulemakings for these drug products are completed.

DATES: Written comments, objections, or requests for oral hearing on the proposed rulemaking before the Commissioner of Food and Drugs by December 31, 1990. Written comments on the agency's economic impact determination by December 31, 1990.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: FDA is proposing to amend 21 CFR part 201, Subpart G, *Specific Labeling Requirements for Specific Drug Products*, to include a warning for all OTC drug products containing water-soluble gums as active ingredients. The warning would state: (Select one of the following, as appropriate: "Take" or "Mix") "this product with at least 8 ounces (a full glass) of water or other fluid. Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have ever had difficulty in swallowing or have any throat problems. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention." The agency considers this warning necessary because water-soluble gums used as active ingredients in certain orally-administered OTC drug products have been associated with esophageal obstruction and asphyxiation.

Water-soluble gums are primarily used in OTC bulk laxative and weight control drug products. The ingredients involved are natural or semisynthetic hydrocolloid gums including, but not limited to, agar, alginic acid, carboxymethylcellulose sodium, carrageenin, glucomannan,[1] guar gum, karaya gum, kelp,[2] methylcellulose, plantago seed (psyllium),[3] polycarbophil, tragacanth, and xanthan gum. The ingredients polycarbophil and polycarbophil calcium are also used in OTC antidiarrheal drug products.

Because of the hydrophilic nature of water-soluble gums, when water is added to the gum it swells and increases in bulk. If inadequate water is added, a viscous, semi-solid mass forms. The rate and degree of swelling, as well as the viscosity and adhesiveness of the mass, vary from product to product depending on the amount of gum present. When orally-administered OTC drug products containing a high level of one of these gums are used by individuals who have difficulty in swallowing, or when such products are taken with an inadequate amount of water or other fluid, there is a risk that the product will swell and form a viscous adhesive mass that can block the throat or esophagus. The type and degree of adverse effects are influenced by the amount of fluid taken with the product.

Esophageal obstruction and asphyxiation associated with the ingestion of water-soluble gums have been reported in the literature since the 1930's, although such reports were relatively rare. However, in recent years FDA has become aware of an increased number of reports. FDA is aware of at least 113 cases of esophageal obstruction and 4 cases of asphyxia associated with orally-administered OTC laxative and weight control products containing these ingredients. Death occurred in six of these cases.

I. Background

As part of FDA's OTC drug review, water-soluble gums were reviewed as OTC bulk laxatives by the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic and Antiemetic Drug Products (Laxative Panel) and as OTC weight control drug products by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel).

The Laxative Panel, in its report published in the Federal Register of March 21, 1975 (40 FR 12902), classified five water-soluble gums in Category I (safe and effective)—carboxymethylcellulose sodium, karaya gum, methylcellulose, polycarbophil, and psyllium. Three additional water-soluble gums were classified in Category III (insufficient effectiveness data)—agar, carrageenan, and guar gum. In its discussion of these bulk laxative ingredients, the Laxative Panel acknowledged the risk of esophageal obstruction from water-soluble gums (40 FR 12902 at 12907) and specifically noted with respect to psyllium:

> Esophageal, gastric, small intestinal and rectal obstruction due to accumulation of mucilaginous derivatives of psyllium preparations have been described on several occasions. The common denominator in most cases has been insufficient water intake or underlying organic disease which resulted in compromise of the intestinal lumen. (40 FR 12908).

The Laxative Panel recommended that labeling for bulk laxative ingredients stress the importance of adequate fluid

[1] Glucomannan is the commonly used name for the glucose/mannose polymer (B-1,4 linked) polymannose acetate.

[2] The panel that evaluated this ingredient as part of FDA's OTC drug review designated it "sea kelp." However, "kelp" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[3] The panel that evaluated the ingredients "plantago ovata husks, plantago seeds, psyllium hemicellulose, psyllium hydrophilic mucilloid, psyllium seed, and psyllium seed husks" as part of FDA's OTC drug review designated these ingredients as "psyllium." However, "plantago seed" is the official name for these ingredients in the "USAN and the USP dictionary of drug names, 1990."

intake, i.e., 8 ounces (oz) of liquid, with each dose.

After reviewing the recommendations of the Laxative Panel and considering public comments received following publication of its report, FDA published a tentative final monograph on OTC laxative drug products in the Federal Register of January 15, 1985 (50 FR 2124). The risk of esophageal obstruction from certain bulk laxative ingredients, including water-soluble gums, and the need for adequate fluid intake (8 oz) with each dose of these ingredients was again discussed in comments 36 and 37 of the tentative final monograph (50 FR 2124 at 2131 and 2132).

In an amendment to the tentative final monograph on OTC laxative drug products, published in the Federal Register of October 1, 1986 (51 FR 35136), FDA proposed that bulk laxative ingredients be administered in divided doses rather than a single daily dose. This action was taken because it was noted that: "* * * the maximum daily dose of some bulk laxatives is so large that it may pose a risk of esophageal obstruction if taken at one time," (51 FR 35136). In response to these proposals, a major manufacturer of psyllium-containing bulk laxatives commented in support of the FDA's recommendation regarding adequate fluid intake (8 oz) with each dose of a bulk laxative. This manufacturer recommended that all bulk laxatives bear the following warning (Ref. 1):

> Bulk forming agents have the potential to block the esophagus, particularly in the presence of esophageal narrowing or when consumed with insufficient fluid. Patients with esophageal narrowing should not use this product. If you observe symptoms of esophageal blockage, including chest pain/pressure, regurgitation and difficulty swallowing, seek immediate medical attention.

The Miscellaneous Internal Panel, in its report on OTC weight control drug products published in the Federal Register of February 26, 1982 (47 FR 8466), classified the water-soluble gums alginic acid, carboxymethylcellulose sodium, carrageenin, chondrus,[4] guar gum, karaya gum, methylcellulose, psyllium, sea kelp, and xanthan gum in Category III. The Miscellaneous Internal Panel noted, with respect to carboxymethylcellulose sodium and methylcellulose, that occasional cases of esophageal obstruction have occurred when these ingredients are chewed or swallowed without liquid (47 FR 8466 at 8477 and 8478). While concluding that the water-soluble gums listed above are safe, the Miscellaneous Internal Panel recommended that directions for these products state: "Take a full glass of water (8 ounces) with each dose," (47 FR 8477 to 8479).

[4] Chondrus was classified in Category III as a separate ingredient by the Miscellaneous Internal Panel; however, chondrus is but one of several sources of carrageenin.

II. Adverse Reactions Associated With Water-Soluble Gums

During 1984 and 1985, 7 cases of esophageal obstruction caused by the swelling of tablets containing glucomannan were reported to the Australian Adverse Drug Reactions Advisory Committee (Ref. 2). All of the subjects were women between the ages of 18 and 62 years who were taking glucomannan-containing products for weight control. None had esophageal disease. Obstruction was complete in 5 of the 7 cases. In all but one case the obstruction was caused by a swollen mass resulting from a single tablet. Esophagoscopy was needed to remove the obstruction in 5 cases. One subject suffered esophageal perforation requiring hospitalization for 2 months (Ref. 2).

FDA's spontaneous reporting system has recently received 17 reports of esophageal obstruction (16 between June 1988 and August 1989) resulting from the use of one of these drug products (Ref. 3). The product contained 500 milligrams (mg) guar gum per tablet, with directions to start with 4 tablets 30 minutes before each meal on the first day and to increase up to 10 tablets 30 minutes before each meal on the 15th day and thereafter. This dosage regimen eventually results in a maximum dose of 15 grams (g) of guar gum per day. Ten of the cases of esophageal obstruction required hospitalization, and one person eventually died as an indirect result of the obstruction. This person developed massive pulmonary emboli one week after open chest surgery to repair an esophageal tear sustained during removal of the guar gum obstruction.

This potential for esophageal obstruction represents a serious hazard for an OTC drug, and the 17 cases are presumed to represent a substantial underreporting. OTC drugs of this type, i.e., those without approved applications, are not subject to mandatory reporting requirements, and reports such as the above 17, which were voluntarily submitted by health professionals, normally account for only about 10 percent of all reports in the agency's spontaneous reporting system.

There has also been a report in the literature of an esophageal obstruction resulting from another guar gum product, this one composed of guar gum and grapefruit fiber (Ref. 4). In that case, a middle-aged man was unable to eat or drink for 12 hours after taking one weight control tablet composed of an unspecified amount of guar gum and grapefruit fiber. Endoscopy revealed a soft, fibrous mass impacted in the esophagus; it was broken apart by the endoscope. The agency is also aware of a report in which a 63-year-old diabetic suffered an esophageal obstruction after taking an OTC product containing guar gum. The obstruction required removal with biopsy tongs (Ref. 5). In another report, a 59-year-old male suffered esophageal obstruction after taking a product containing guar gum (Ref. 6). Esophagoscopy was required to remove the obstruction.

Between 1975 and 1989, FDA received 61 adverse reaction reports of esophageal obstruction from OTC laxative drug products containing a high concentration of psyllium (Ref. 7). These cases involved subjects ranging in age from 8½ months to 85 years. In at least 4 of the 61 cases, inadequate amounts of fluid were administered with the products. In 13 of the cases, there was evidence of esophageal narrowing or swallowing dysfunction. Death due to asphyxia occurred in 4 cases.

The agency is also aware of reports in which 3 individuals between 56 and 75 years of age suffered esophageal obstruction after taking a psyllium-containing laxative with "a few sips" or "a single swallow" of water. In two of these cases, esophagoscopy was required to remove the obstruction (Refs. 8, 9, and 10).

Noble and Grannis (Ref. 11) report the case of an 81-year-old male, with a history of swallowing dysfunction, who suffered an esophageal obstruction after taking a psyllium-containing laxative with an inadequate amount of water. He required esophagoscopy to remove the mass. The authors mention 21 episodes of esophageal obstruction due to this particular laxative product within a 3-year period.

The agency is aware of two reports of esophageal obstruction from OTC drug products containing karaya gum. In one case, a 76-year-old woman experienced an obstruction that had to be removed by a Foley catheter (Ref. 12). In the second case, an 80-year-old woman died from an esophageal obstruction after taking an OTC laxative drug product with an inadequate amount of water (Ref. 13).

The agency is also aware of one case of esophageal obstruction resulting from a methylcellulose-containing laxative. A 42-year-old woman suffered an obstruction after taking a methylcellulose-containing laxative with

only a small sip of juice. The resulting obstruction had to be pushed downward into the stomach with a gastroscope (Ref. 14).

Although there is little, if any, current use in this country of OTC drug products containing tragacanth as an active ingredient, the agency is aware of two reports of esophageal obstruction that occurred a number of years ago from an OTC laxative drug product containing this ingredient (Refs. 15 and 16). A 59-year-old woman (Ref. 15) and a 47-year-old man (Ref. 16) suffered an obstruction following ingestion of the same product with a small amount of water. In both cases, esophagoscopy was necessary to remove the obstruction.

References

(1) Comment No. C00100, Docket No. 78N–036L, Dockets Management Branch.

(2) Henry, D.A., et al., "Glucomannan and Risk of Oesophageal Obstruction," *British Medical Journal*, 292: 391–392, 1986.

(3) Adverse Drug Reaction Reports, Reference No. 3 in OTC Volume AF, Docket No. 90N–0200, Dockets Management Branch.

(4) Gebhard, R.L., and J. Albrecht, "The Diet Pill that Worked," *The New England Journal of Medicine*, 322:702, 1990.

(5) Ranft, K., and W. Imhof, "Bolusobstruktion des Distalen Osophagus Durch Pflanzliche Quellstoffe (Guarmehl)," *Deutsche Medizinische Wochenschrift*, 108: 1968–1969, 1983.

(6) Sorensen, A.J., and O.R. Rasmussen, "Synkestop Efter Indtagelse af Fiberholding Helsekostprodukt Lej–Guar," *Ugeskrift For Laeger*, 145:171–172, 1983.

(7) Adverse Drug Reaction Reports, Reference No. 7 in OTC Volume AF, Docket No. 90N–0200, Dockets Management Branch.

(8) Hinkel, C.L., "Complete Obstruction of the Esophagus Following Serutan Ingestion," *Journal of the American Medical Association*, 146:1129–1131, 1951.

(9) Roden, V., "Esophageal Obstruction Due to Serutan," *Journal of the American Medical Association*, 147:777, 1951.

(10) Melamed, A., and A. Marck, "Esophageal Obstruction Due to Serutan," *Journal of the American Medical Association*, 152:318, 1953.

(11) Noble, J.A., and F.W. Grannis, "Acute Esophageal Obstruction by a Psyllium-based Bulk Laxative," *Chest*, 86:800, 1984.

(12) Voinchet, O., and A. Mouchet, "Obstruction de l'Oesophage Par Mucilage," *La Nouvelle Presse Medicale*, 3:1223–1225, 1974.

(13) Sandeman, D.R., et al., "Oesophageal Obstruction Due to Hygroscopic Gum Laxative," *Lancet*, 1:364–365, 1980.

(14) Roesch, W., and R. Ottenjann, "Impacted Methylcellulose—Foreign Body Simulating Esophageal Carcinoma," *Endoscopy*, 3:189–191, 1970.

(15) Waltz, M.R., "Esophageal Obstruction Resulting From an Injudicious Method of Ingesting a Hygroscopic Gum Laxative (SARAKA)," *Journal of the American Medical Association*, 112:229, 1939.

(16) Goldman, J.L., "Esophageal Obstruction From a Hygroscopic Gum Laxative (SARAKA)," *Journal of the American Medical Association*, 108:1408–1409, 1937.

III. The Agency's Conclusions on the Safety of Water-Soluble Gums in Orally-Administered OTC Drug Products

The Safety and proper labeling of water-soluble gums in orally-administered OTC drug products is being considered as part of FDA's ongoing review of all OTC drugs, specifically in the OTC laxative and weight control drug products rulemakings. However, these rulemakings are still pending.

Esophageal obstruction and asphyxiation due to orally-administered OTC drug products containing water-soluble gums, hydrophilic gums, and hydrophilic mucilloids as active ingredients are significant health risks when these products are taken without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty in swallowing. Therefore, prior to completion of the OTC drug review, the agency is proposing to require a warning for all OTC drug products containing water-soluble gums, hydrophilic gums, or hydrophilic mucilloids as active ingredients, These ingredients include, but are not limited to, agar, alginic acid, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan, guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum. (NOTE: Although some of these ingredient names are no longer official, they do appear in the labeling of some products. Therefore, the agency is including all ingredient names, whether official or not, in the proposed regulation.)

Because of the potential serious health risk involved the agency is proposing that this warning appear in bold print and capital letters. The required warning would state the following:

WARNING: (Select one of the following, as appropriate: TAKE or MIX) THIS PRODUCT WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ADEQUATE FLUID MAY CAUSE IT TO SWELL AND BLOCK YOUR THROAT OR ESOPHAGUS AND MAY CAUSE CHOKING. DO NOT TAKE THIS PRODUCT IF YOU HAVE EVER HAD DIFFICULTY IN SWALLOWING OR HAVE ANY THROAT PROBLEMS.

IF YOU EXPERIENCE CHEST PAIN, VOMITING, OR DIFFICULTY IN SWALLOWING OR BREATHING AFTER TAKING THIS PRODUCT, SEEK IMMEDIATE MEDICAL ATTENTION.

This warning in § 201.319, which would be required on the effective date of a final rule, would eventually be incorporated into the labeling contained in the individual applicable OTC drug monographs (e.g., laxative drug products and weight control drug products) as they are finalized. However, it would be an unacceptable health risk to delay implementation until these rulemakings are completed. Manufacturers are encouraged to comply voluntarily with this proposed rule at the earliest possible date.

The agency has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The proposal would impose direct one-time costs associated with changing product labels, but that cost is estimated to total less than $1 million.

Because the agency has not previously invited specific comment on the economic impact of a requirement of interim labeling of OTC drug products containing water-soluble gums as active ingredients, a period of 60 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 31, 1990, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 31, 1990. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this

document, and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the Federal Register.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that subchapter C of chapter I of title 21 of the Code of Federal Regulations be amended in part 201 as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 371, 374, 376); secs. 215, 301, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n, 264).

2. Section 201.319 is added to read as follows:

§ 201.319 Water-soluble gums, hydrophilic gums, and hydrophilic mucilloids (including but not limited to agar, alginic acid, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B–1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum); required warning.

(a) Reports in the medical literature and data accumulated by the Food and Drug Administration indicate that esophageal obstruction and asphyxiation have been associated with the ingestion of water-soluble gums, hydrophilic gums, and hyrophilic mucilloids including but not limited to agar, alginic acid, carboxymethylcellulose sodium, carrageenan, chondrus, glucomannan ((B–1,4 linked) polymannose acetate), guar gum, karaya gum, kelp, methylcellulose, plantago seed (psyllium), polycarbophil, tragacanth, and xanthan gum. Esophageal obstruction and asphyxiation due to orally-administered drug products containing water-soluble gums, hydrophilic gums, and hydrophilic mucilloids as active ingredients are significant health risks when these products are taken without adequate fluid or when they are used by individuals with esophageal narrowing or dysfunction, or with difficulty in swallowing.

(b) Any drug products containing water-soluble gums, hydrophilic gums, and hydrophilic mucilloids for human use in oral dosage forms are misbranded within the meaning of section 502 of the Federal Food, Drug, and Cosmetic Act unless their labeling bears the following warning in bold print and capital letters:

Warning: (Select one of the following, as appropriate: TAKE or MIX) THIS PRODUCT WITH AT LEAST 8 OUNCES (A FULL GLASS) OF WATER OR OTHER FLUID. TAKING THIS PRODUCT WITHOUT ADEQUATE FLUID MAY CAUSE IT TO SWELL AND BLOCK YOUR THROAT OR ESOPHAGUS AND MAY CAUSE CHOKING DO NOT TAKE THIS PRODUCT IF YOU HAVE EVER HAD DIFFICULTY IN SWALLOWING OR HAVE ANY THROAT PROBLEMS. IF YOU EXPERIENCE CHEST PAIN, VOMITING, OR DIFFICULTY IN SWALLOWING OR BREATHING AFTER TAKING THIS PRODUCT, SEEK IMMEDIATE MEDICAL ATTENTION.

Dated: September 1, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–25482 Filed 10–29–90; 8:45 am]

BILLING CODE 4160–01–M

federal register

Tuesday
October 30, 1990

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357

Weight Control Drug Products for Over-the-Counter Human Use; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 357

[Docket No. 81N-0022]

RIN 0905-AA06

Weight Control Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking stating that certain ingredients in over-the-counter (OTC) weight control drug products are not generally recognized as safe and effective and are misbranded (nonmonograph status). FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and the public comments on an advance notice of proposed rulemaking that was based on those recommendations. Based on the absence of substantive comments in opposition to the Panel's proposed nonmonograph status for these ingredients as well as the failure of interested parties to submit new data or information to FDA pursuant to 21 CFR 330.10(a)(6)(iv), FDA has determined that the presence of these ingredients in an OTC weight control drug product would result in that drug product not being generally recognized as safe and effective or would result in misbranding. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposal before the Commissioner of Food and Drugs by December 31, 1990. Written comments on the agency's economic impact determination by December 31, 1990.

ADDRESSES: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 26, 1982 (47 FR 8466), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC weight control drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Miscellaneous Internal Panel classified a total of 113 OTC weight control drug product ingredients. Two ingredients were classified in Category I (safe and effective for OTC use): Phenylpropanolamine hydrochloride and benzocaine. One hundred ingredients were classified in Category II (not safe and effective for OTC use) (see table I below). Eleven ingredients were classified in Category III (insufficient data to classify in Category I or Category II, more studies are needed) (see table II below). The ingredients classified in Category II included all of the ingredients listed in the call-for-data notice published in the **Federal Register** of August 27, 1975 (40 FR 38179) for which the Panel was not able to locate, and was not aware of, any significant body of data demonstrating the safety and effectiveness of use for weight control (47 FR 8466 at 8471). Of the 11 ingredients that the Panel classified in Category III, no data were submitted on 6 ingredients: carrageenan, chondrus, guar gum, karaya gum, sea kelp, and psyllium, all hydrophilic colloids. The Panel received safety and effectiveness data on the ingredients alginic acid, carboxymethylcellulose sodium, methylcellulose, sodium bicarbonate (in combination with bulking agents), and xanthan gum. Although the effectiveness data were insufficient, the Panel classified all of these hydrophilic colloids in Category III, stating that these ingredients may act as bulking agents and should be provided an opportunity to demonstrate their effectiveness for weight control use (47 FR 8477). The Panel did not question the safety of bulking agents because "they have been in use for years as food additives and some have had medicinal use."

Interested persons were invited to submit comments on the Panel's recommendations by May 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by June 28, 1982. In a notice published in the **Federal Register** of April 23, 1982 (47 FR 17576), the agency advised that it had extended the comment period until July 26, 1982, and the reply comment period until August 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on public display in the Dockets Management Branch (address above), after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, 6 drug manufacturers, 1 drug manufacturers' association, 1 clinical consulting firm, 6 professional associations, 8 physicians, 1 nutritionist, 1 health department, 2 Congressmen, 1 consumer organization, and 10 individuals submitted comments. No comments were submitted on OTC weight control drug products containing any ingredient that the Panel had classified as nonmonograph (Category II or Category III). Copies of the comments received are on public display in the Dockets Management Branch.

This proposed rulemaking encompasses all ingredients classified as Category II and Category III in the advance notice of proposed rulemaking for OTC weight control drug products. No significant comments or new data have been submitted to upgrade the status of these ingredients. Under the OTC drug review administrative procedures (21 CFR 330.10(a)(7)(ii)), the Commissioner may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and for which no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)).

As mentioned, no substantive comments or new data were submitted to support reclassification of any of these 111 Category II and Category III OTC weight control ingredients to monograph status. Comments and new data were received on the proposed Category I ingredients, phenylpropanolamine hydrochloride and benzocaine, and on the labeling proposed for this class of OTC drug

products. Before issuing a tentative final monograph on OTC weight control drug products that addresses proposed Category I ingredients and labeling issues, the Commissioner is issuing a separate notice proposing that these 111 Category II and III ingredients be found not generally recognized as safe and effective. Any OTC weight control drug product containing any of these 111 ingredients would not be allowed to continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has elected to act on these 111 ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC weight control drug product review. Manufacturers are encouraged to comply voluntarily at the earliest possible date.

This proposal does not constitute a reopening of the administrative record or an opportunity to submit any new data to the OTC weight control rulemaking. Should an interested person submit a comment indicating that substantive comments or new data were previously submitted to the administrative record, the agency will review the record for the OTC weight control drug product rulemaking and make a determination whether the affected ingredient shall continue to be evaluated under this rulemaking or be included in the final rule that will issue pursuant to this proposed rule.

FDA advises that the active ingredients discussed in this document (see tables I and II below) will not be included in the tentative final monograph on OTC weight control drug products, to be published in a future issue of the **Federal Register**, because they have not been shown to be generally recognized as safe and effective for their intended use. The agency further advises that these ingredients should be eliminated from OTC weight control drug products 6 months after the date of publication in the **Federal Register** of a final rule regarding their status, regardless of whether further testing is undertaken to justify future use. The OTC drug review administrative procedures provide that any new data and information submitted after the administrative record has closed following publication of a tentative final monograph (notice of proposed rulemaking), but prior to the establishment of a final monograph, will be considered by the Commissioner only after a final monograph has been published in the **Federal Register**, unless the Commissioner finds that good cause has been shown that warrants earlier consideration. (See 21 CFR 330.10(a)(7)(v).)

The agency points out that publication of a final rule under this proceeding does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application (NDA) that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.)

I. OTC Weight Control Drug Category II and III Ingredients

Based on the criteria discussed above, FDA is proposing that the following ingredients are not generally recognized as safe and effective and are misbranded when labeled for use in OTC weight control drug products:

TABLE I.—Ingredients Classified by the Panel as Category II Weight Control Active Ingredients

Alcohol
Alfalfa
Anise oil
Arginine
Ascorbic acid[1]
Bearberry[1]
Biotin
Bone marrow, red[3]
Buchu
Buchu, potassium extract
Caffeine
Caffeine citrate
Calcium
Calcium carbonate
Calcium caseinate
Calcium lactate
Calcium pantothenate[4]
Cholecalciferol[5]
Choline
Citric acid
Cnicus benedictus
Copper
Copper gluconate
Corn oil
Corn syrup
Corn silk, potassium extract
Cupric sulfate
Cyanocobalamin (vitamin B_{12})
Cystine
Dextrose
Docusate sodium[6]
Ergocalciferol [7]
Ferric ammonium citrate
Ferric pyrophosphate
Ferrous fumarate

TABLE I.—Ingredients Classified by the Panel as Category II Weight Control Active Ingredients—Continued

Ferrous gluconate
Ferrous sulfate (iron)
Flax seed
Folic acid
Fructose
Histidine
Hydrastic canadensis
Inositol
Iodine
Isoleucine
Juniper, potassium extract
Lactose
Lecithin
Leucine
Liver concentrate
Lysine[8]
Lysine hydrochloride[9]
Magnesium
Magnesium oxide
Malt
Maltodextrin
Manganese citrate
Mannitol
Methionine
Mono- and di-glycerides[10]
Niacinamide
Organic vegetables
Pancreatin[11]
Pantothenic acid
Papain
Papaya enzymes
Pepsin
Phenacetin
Phenylalanine
Phosphorus
Phytolacca[12]
Pineapple enzymes
Potassium citrate
Pyridoxine hydrochloride (vitamin B_6)
Riboflavin
Rice polishings
Saccharin
Sea minerals
Sesame seed
Sodium
Sodium caseinate
Sodium chloride (salt)
Soybean protein[13]
Soy meal
Sucrose
Thiamine hydrochloride (vitamin B_1)
Thiamine mononitrate (vitamin B_1 mononitrate)
Threonine
Tricalcium phosphate
Tryptophan
Tyrosine
Uva ursi, potassium extract
Valine
Vegetable
Vitamin A
Vitamin A acetate
Vitamin A palmitate
Vitamin E
Wheat germ
Yeast

[1] The Panel designated this ingredient "ascorbic acid (vitamin C)." However, "ascorbic acid" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[2] The Panel designated this ingredient "uva ursi." However, "bearberry" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[3] The Panel designated this ingredient "bone marrow-red-glycerin extract." However, "bone marrow, red" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[4] The Panel designated this ingredient "calcium pantothenate (D-calcium pantothenate)." However, "calcium pantothenate" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[5] The Panel designated this ingredient "vitamin D." However, "cholecalciferol" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[6] The Panel designated this ingredient "dioctyl sodium sulfosuccinate." However, "docusate sodium" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[7] The Panel designated this ingredient "vitamin D_2." However, "ergocalciferol" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[8] The Panel designated this ingredient "L-lysine." However, "lysine" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[9] The Panel designated this ingredient "L-lysine monohydrochloride." However, "lysine hydrochloride" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[10] The Panel designated these ingredients "glycerides (mono and di)." However, "mono- and diglycerides" is the official name for this ingredient in the "United States Pharmacopeia XXII—National Formulary XVII," 1990.

[11] The Panel designated this ingredient "pancreatin enzymes." However, "pancreatin" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[12] The Panel designated this ingredient "phytolacca berry juice." However, "phytolacca" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

[13] The Panel designated this ingredient "soy bean protein." However, "soybean protein" is the official name for this ingredient in the Center for Drug Evaluation and Research dictionary of drug names.

TABLE II—Ingredient Classified by the Panel as Category III Weight Control Active Ingredients

Alginic acid
Carboxymethylcellulose sodium
Carrageenan
Chondrus
Guar gum
Karaya gum
Kelp[14]
Methylcellulose
Plantago seed[15]
Sodium bicarbonate
Xanthan gum

[14] The Panel designated this ingredient "sea kelp." However, "kelp" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

[15] The Panel designated this ingredient "psyllium." However, "plantago seed" is the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1990."

As noted above, no data were submitted to the Panel on the ingredient guar gum. Since the Panel's report was published in 1982, FDA's spontaneous reporting system has received 17 reports of esophageal obstruction (16 between June 1988 and August 1989) resulting from the use of an OTC weight control drug product containing guar gum (Ref. 1). The product contained 500 milligrams (mg) guar gum per tablet, with directions to start with 4 tablets 30 minutes before each meal on the first day and to increase up to 10 tablets 30 minutes before each meal on the 15th day and thereafter. This dosage regimen eventually results in a maximum dose of 15 grams (g) of guar gum per day. Ten of the cases of esophageal obstruction required hospitalization, and one person eventually died as an indirect result of the obstruction, developing massive pulmonary emboli one week after open chest surgery to repair an esophageal tear sustained during removal of the guar gum obstruction.

This potential for esophageal obstruction represents a serious hazard for an OTC drug, and the 17 cases are presumed to represent a substantial underreporting. OTC drugs of this type, i.e., those without approved applications, are not subject to mandatory reporting requirements, and reports such as the above 17, which were voluntarily submitted by health professionals, normally account for only about 10 percent of all reports in the agency's spontaneous reporting system.

There has also been a report in the literature of an esophageal obstruction resulting from another guar gum product, this one composed of guar gum and grapefruit fiber (Ref. 2). In that case, a middle-aged man was unable to eat or drink for 12 hours after taking one weight control tablet composed of an unspecified amount of guar gum and grapefruit fiber. Endoscopy revealed a soft, fibrous mass impacted in the esophagus; it was broken apart by the endoscope. The agency is also aware of a report in which a 63-year-old diabetic suffered an esophageal obstruction after taking an OTC product containing guar gum. The obstruction required removal with biopsy tongs (Ref. 3). In another report, 59-year-old male suffered esophageal obstruction, requiring esophagoscopy to remove the obstruction, after taking a product containing guar gum (Ref. 4).

The agency is also aware that the United Kingdom has banned (effective June 13, 1989) the sale of "slimming pills" containing more than 15 percent guar gum (Ref. 5). That action was taken by the Ministry of Agriculture, Fisheries and Food on the recommendation of the Committee on Toxicity of Chemicals in Food, Consumer Products, and the Environment (COT) and the Food Advisory Committee. The two committees advised that these products pose a health risk because the gum tends to swell rapidly when swallowed and can lodge in the throat. The COT has also advised that the restrictions on substances used in the slimming products should also be extended to cover the sale of all formulations containing dehydrated products which could swell and create a blockage in the throat. The United Kingdom Ministry of Agriculture, Fisheries and Food is currently considering that recommendation

In the consumer information provided with the guar gum weight control drug product involved in the adverse drug reactions reported to FDA, the manufacturer cites three references in the literature in support of the effectiveness of guar gum as a weight control drug product ingredient (Refs. 6, 7, and 8). These references were not reviewed by the Miscellaneous Internal Panel. The agency has reviewed the references and finds that they are inadequate to support the effectiveness of guar gum as an ingredient in OTC weight control drug products.

The first publication (Ref. 6) reports on two studies. One study involved nine obese female subjects recruited from an outpatient obesity clinic. The subjects were studied primarily to examine the acute effects of a single dose of guar gum on post-prandial glucose levels and insulin, by they were also studied for long-term effects, including weight loss, for a period of 8 weeks, taking 10 g guar gum twice daily. All subjects received the experimental therapy; there was no concurrent control group. The subjects were asked explicitly not to alter their normal diet or energy intake during the trial period. The subjects were reported to have lost an average of 4.3 kilograms (kg) after 8 weeks (said to be a statistically significant change), but in the absence of a control group, the agency does not consider this result to be persuasive evidence of effectiveness. The investigator's direction to the subjects not to alter their normal dietary habits does not alter the fact that these were obese subjects who were aware that the study was examining cholesterol and obesity. The agency believes that these circumstances would make the subject more conscious of their diet than they were prior to their entry into this study and that this awareness might well have led them to alter their eating patterns. The study does not rule out the possibility that guar gum can contribute to weight loss, but in the absence of a concurrent control, or an explicit historical control, the study is not considered to be an adequate and well-controlled study. Additionally, the number of subjects in this study is too small to provide sufficient information

to support the effectiveness of this ingredient.

The second study involved 21 subjects (2 males and 19 females), also recruited from an outpatient obesity clinic. The subjects were given either 10 g of wheat bran or 10 g of guar gum twice daily for a week and then switched to the other therapy. This procedure was repeated a total of 10 times for the patients who completed the study. Body weight was measured each week before treatment, and hunger ratings were also examined. The author's description of the study, with respect to the number of subjects completing the study and the fate of individual subjects, is not well described. It appears that only 7 of the 21 entered subjects completed all 10 weeks of the study. In those subjects, there was a mean weight loss of 7 kg. The fate of the other 14 subjects is not clear; however, a table in the publication provides information on 9 subjects who the author describes as having completed the 10-week study. In this table, the average weight loss each week is presented according to whether the subjects were on guar gum or wheat bran. The mean weekly weight loss of 0.94 kg on guar gum was not signficantly different from the weight loss of 0.64 kg on wheat bran ($p < 0.1$). How the 9 subjects in this analysis differ from the 7 subjects in the other analysis is not clear from the information provided. Even if one ignores potential carryover effects and the impossibility of determining which subjects were included in the results and why, the two treatments were not significantly different. Although the results of this study do not rule out a possible effect of guar gum, the study does not support an effect of guar gum on weight control because no significant difference in weight loss between the groups was found and because the conduct of the study was not described adequately.

The second publication (Ref. 7) involved an open, uncontrolled study in 11 hyperlipidemic subjects (4 men and 7 women) (Ref. 7). The study focused predominantly on blood lipids. The subjects were treated for 8 weeks with guar-containing crispbread—not the product described above, but one that might be considered somewhat related. The subjects had a mean weight loss of 2.4 kg over the 8-week period. As pointed out above, the agency believes that subjects who are conscious of being in a lipid trial might well be more attentive to the proper diet and fat content of their meals, and may lose weight in the absence of any medical treatment. A concurrent control group is essential to evaluate the effectiveness of such a therapy. Although the agency again recognizes that the study does not rule out the possibility that guar gum-containing products might contribute to weight loss, it does not provide evidence that they do.

The third publication (Ref. 8) appears to be a reasonably well-designed trial of guar gum, 15 g/day, compared with a placebo (wheat flour containing no fiber), and with no treatment. Thirty three middle-aged women were identified as hypercholesterolemic during screening for the prevention of coronary heart disease. Eleven subjects each were randomized to 1 of 3 treatment groups: Guar gum, placebo, or no treatment. One subject dropped out of the guar gum treatment group, and her data were not included in any analyses. Thus, there were 10, 11, and 11 subjects in the guar gum, placebo, and no-treatment groups, respectively. The guar gum was administered as 5 g of granules (equivalent to 3.65 g pure guar gum) three times a day before meals. The placebo treatment, consisting of 5 g of wheat flour with no fiber, was also given three times a day before meals. Baseline measurements of blood lipid profiles, body weight, and blood pressure were taken every 4 weeks for a total of 3 times. Subjects were instructed to decrease their intake of saturated fats, simple carbohydrates, and excessive alcohol. Subjects in the 2 treatment groups appear to have been seen once a month for 4 months; the no-treatment group appears to have been seen only at the end of 4 months.

Individual subjects data were not provided. Mean body weights at baseline were given as 62.9 kg (±6.6 kg), 66.1 kg (±13.3 kg), and 63.3 kg (±9.6 kg), respectively. After 4 months, the guar gum group had a mean weight of 60.4 kg (±9.5 kg), a 2.5 kg decrease. The decreases seen in the placebo and no-treatment groups were 0.4 and 0.6 kg, with final weights of 65.7 kg (±17.9 kg) and 62.7 kg (±13.6 kg), respectively. The authors did not compare treatments. Instead, they did within-treatment comparisons of baseline and month 4 body weight. They concluded that month 4 body weight was signficantly lower than baseline only in the guar gum group. However, when guar gum treatment is compared with placebo treatment, there is no significant difference between the two groups (independent sample t-test, $p = .413$).

Although body weight did decrease more in the guar gum group over 4 months than in the other groups, the study does not demonstrate the effectiveness of guar gum as a weight loss agent, as there was no statistically significant difference between guar gum and either placebo or no treatment. In addition, the study was not specifically designed to study weight loss and was not done solely in obese subjects. Therefore, the results, even if favorable, would not necessarily be applicable to the population of interest. Further, because the study was not intended to study weight loss, this raises the problem of making comparisons with unrelated data and drawing invalid conclusions from the data.

The agency concludes that the results of the three cited studies are not adequate to support the effectiveness of guar gum as an ingredient in OTC weight control drug products. Two of the reports provided data from uncontrolled, poorly-designed studies (Refs. 6 and 7), and the one well-designed study did not show a significant difference in weight loss when the guar gum group was compared with either the control or the no-treatment group (Ref. 8).

Based on the above information, the agency concludes that there are not adequate data to support the effectiveness of guar gum as an ingredient in OTC weight control drug products. Further, there are data indicating a safety hazard of esophageal obstruction from the use of weight control drug products containing this ingredient. Recently, the agency issued a number of regulatory letters (Refs. 9 and 10) to manufacturers of weight control drug products containing guar gum. The agency stated that such products are new drugs within the meaning of section (201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and that the products are misbranded in that their labeling is false and misleading by representing and suggesting that there is substantial scientific evidence to establish that the products are safe and effective for use as weight control drugs. Furthers, these products do not have approved new drug applications filed pursuant to section 505(b) of the act (21 U.S.C. 355(b)). Accordingly, FDA requested the manufacturers to cease distribution of such products. Therefore, FDA concludes that guar gum-containing weight control drug products are not appropriate for OTC use. Accordingly, the agency is reclassifying guar gum for use in OTC weight control drug products from Category III to Category II.

References

(1) Adverse Drug Reaction Reports, in OTC Volume 17ETFR, Docket No. 81N-0022, Dockets Management Branch.

(2) Gebhard, R. L., and J. Albrecht, "The Diet Pill That Worked," Letter to the Editor.

The New England Journal of Medicine, 322:702, 1990.

(3) Ranft, K., and W. Imhof, "Bolusobstruktion des Distalen Osophagus Durch Pflanzliche Quellstoffe (Guarmehl)," Deutsche Medizinische Wochenschrift, 108." 1968–1969, 1983.

(4) Sorensen, A.J., And O. R. Rasmussen, "Synkestop Efter Indtagelse af Fiberholding Helsekostprodukt Lej-Guar," *Ugeskrift for Laeger*, 145:171–172,–1983.

(5) News Release, United Kingdon Ministry of Agriculture, Fisheries and Food, "Macgregor Bans Health Risk Slimming Pills," 212/89, May 23, 1989.

(6) Krotkiewski, M., "Effect of Guar Gum on Body-Weight, Hunger Ratings and Metabolism in Obese Subjects," *British Journal of Nutrition*, 52:97–105, 1984.

(7) Jenkins, D. J., et al., "Dietary Fiber and Blood Lipids: Treatment of Hypercholesterolemia with Guar Crispbread," *American Journal of Clinical Nutrition*, 33:575–581, 1980.

(8) Tuomilehto, J., et al., "Effect of Guar Gum on Body Weight and Serum Lipids in Hypercholesterolemic Females," *Acta Medical Scandinavica*, 208:45–48, 1980.

(9) Letter from R. G. Chesemore, FDA, to Health Care Products, Inc., in OTC Volume 17ETFR, Docket No. 81N–0022, Dockets Management Branch.

(10) Letter from D. L. Michels, FDA, to Universal Nutrition Corporation, Nutrition Headquarters, Fat Busters, Inc., in OTC Volume 17ETFR, Docket No. 81N–0022, Dockets Management Branch.

The Panel identified caffeine and caffiene citrate as ingredients having a stimulant effect but no anorectic effect (47 FR 8466 at 8472). The Panel reviewed one study on a combination product containing phenylpropanelamine hydrochloride and caffeine as an anorectic only. Although the study showed a greater weight loss for the combination than when using the phenylpropanolamine alone, the results were not statistically significant because the study was not long enough and did not contain a sufficient number of subjects (47 FR 8476). Based on the Panel's evaluation, the agency is classifying caffeine and caffeine citrate as Category II ingredients for weight control use in this document.

II. The Agency's Tentative Conclusions on Category II and III Ingredients in OTC Weight Control Drug Products

The agency has determined that no substantive comments or additional data have been submitted to the OTC drug review to support any of the ingredients listed above as being generally recognized as safe and effective in OTC weight control drug products. Based on the agency's procedural regulations (21 CFR 330.10(a)(7)(ii)), the agency has determined that these ingredients should be found to be not generally recognized as safe and effective for OTC use before a final monograph for OTC weight Control drug products is established. Accordingly, any drug product containing any of these ingredients and labeled for OTC use as a weight control drug product will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulation is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend or establish a monograph for OTC weight control drug products to include any of the above ingredients. (See 21 CFR 10.30.) Any OTC weight control drug product containing any of the above ingredients initially introduced or initially delivered for introduction into interstate commerce after the effective date of final rule that removes these Category II and III ingredients from the market and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act (21 U.S.C. 352 and 355) and, therefore, subject to regulatory action. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the rule would be required to be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency invited public comment in the advance notice of proposed rulemaking on OTC weight control drug products regarding any impact that this rulemaking would have on OTC weight control drug products (47 FR 8466 at 8469). No comments on economic impacts were received. Moreover, manufacturers of products containing these ingredients have not provided any substantive data to support their continued marketing. Accordingly, the agency concludes that there is no basis for the continued marketing of these ingredients for OTC use in weight control drug products. Further, there are ingredients recommended by the Panel which manufacturers can use to reformulate affected products. As a result of this proposal, manufacturers may need to reformulate or discontinue marketing some products prior to promulgation of the final monograph on OTC weight control drug products. If reformulation is chosen, there will be no additional costs because reformulation will be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of ingredients for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers will benefit from being able to use alternative ingredients that a Panel has recommended be found to be generally recognized as safe and effective without incurring the additional expense of clinical testing for these ingredients. Based on the above, the agency has determined that this proposed rule is not a major rule under Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by December 31, 1990. Such comments should be submitted to the Dockets Management Branch (address above) and identified with the docket number found in brackets in the heading of this document. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(C)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 31, 1990, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed rulemaking. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 31, 1990. Three

copies of all comments, objectons, and requests are to be submitted, except that individuals may submit one copy. Comments, objejctions, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Dated, September 1, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–25483 Filed 10–29–90; 8:45 am]

BILLING CODE 4160–01–M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4757/Pub. L. 101-462

To provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police. (Oct. 25, 1990; 104 Stat. 1079; 1 page) Price: $1.00

H.J. Res. 214/Pub. L. 101-463

Designating the week of October 22 through 28, 1990, as "Eating Disorders Awareness Week". (Oct. 25, 1990; 104 Stat. 1080; 1 page) Price: $1.00

H.J. Res. 518/Pub. L. 101-464

Designating October 13 through 20, 1990 as "American Textile Industry Bicentennial Week". (Oct. 25, 1990; 104 Stat. 1081; 1 page) Price: $1.00

S.J. Res. 158/Pub. L. 101-465

Designating October 21 through October 27, 1990, as "World Population Awareness Week". (Oct. 25, 1990; 104 Stat. 1082; 2 pages) Price: $1.00

Note: In the List of Public Laws printed in the **Federal Register** on October 25, 1990, H.R. 5070, Public Law 101-449, was incorrectly printed as H.R. 5078. It should read as follows:

H.R. 5070/Pub. L. 101-449

To amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration and other services necessary for the John F. Kennedy Center for the Performing Arts, and for other purposes. (Oct. 22, 1990; 104 Stat. 1050; 2 pages) Price: $1.00